IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT CLEVELAND

IN RE:	:	Case No. 1:17-md-2804
NATIONAL PRESCRIPTION OPIATE LITIGATION	:	
	:	**VOLUME 22**
CASE TRACK THREE	:	JURY TRIAL
	:	*(Pages 5609 - 5899)*
	:	*November 3, 2021*

TRANSCRIPT OF JURY TRIAL PROCEEDINGS

HELD BEFORE THE HONORABLE DAN AARON POLSTER

SENIOR UNITED STATES DISTRICT JUDGE

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United States District Court
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- - - - -

Table of Contents

(In open court at 8:47 a.m.)

THE COURT: Good morning.

MR. MAJORAS: Your Honor, before we go on the record, can I raise one point?

THE COURT: Sure.

(Off-the-record discussion.)

THE COURT: All right. Everyone can be seated.

Why don't we start with Mr. Edwards, because that seems to be quick. Plaintiffs have only one exhibit, 20809.

Any objection to that?

MR. SWANSON: No objection.

THE COURT: Do the defendants have any? It was your witness. I assume you have some.

MR. SWANSON: Yeah, we do.

Your Honor, I have Walgreens and CVS's exhibits, and I think Walmart may have as well.

The first is CVS-MDL-3795.

THE COURT: It's confusing because I thought almost all the exhibits have five-digit numbers. I mean, I --

MR. SWANSON: I guess it's 03795.

THE COURT: All right. Okay. Any objection to that?

MR. DELINSKY: Judge, I have folks in the

witness room. We'll confirm whether we're missing a digit in that.

THE COURT: Any objection to that?

MR. WEINBERGER: No objection.

THE COURT: Thank you. That's in.

MR. SWANSON: The second is DEF-MDL-12782.

THE COURT: Any objection to that one?

Thank you, that's in.

MR. SWANSON: The third is WAG-MDL-01102.

THE COURT: Any objection to that?

MR. WEINBERGER: No, Your Honor.

THE COURT: Thank you.

MR. WEINBERGER: Excuse me just a second, the one previously -- we have no objection to that. Okay. Sorry.

MR. SWANSON: And then the last one is WAG-MDL-01061.

MR. WEINBERGER: No objection.

THE COURT: Okay. Thank you. Those four are in.

Any exhibits from any of the other defendants?

MS. FUMERTON: Yes, Your Honor, for Walmart. We have two. It's the two inspection reports, WMT-MDL-01387.

MR. WEINBERGER: No objection.

THE COURT: Okay.

MS. FUMERTON: And the other one is WMT-MDL-01418.

MR. WEINBERGER: No objection.

THE COURT: Okay. Does CVS have any?

MR. DELINSKY: I think Mr. Swanson read them in.

THE COURT: All right, fine, so that takes care of Mr. Edwards.

All right. We had a long list here from the plaintiffs for Ms. Hiland. Does the defense have any objection to any of those?

MS. FUMERTON: Yes, Your Honor, we do have a few objections.

THE COURT: All right. Well, which one do you object to?

MS. FUMERTON: So we object to P-17527. If you're looking at the same chart plaintiffs gave me, it's number 7.

THE COURT: Okay. All right.

MS. FUMERTON: And the reasons that we object to this is it's really the attachments. We would be okay with the front of the e-mail coming in, which is what was asked, but the attachment has a lot of information about different lawsuits and inventory fines, and stuff that has

nothing to do with this case.

THE COURT: Are the plaintiffs offering -- what are they? Can I see that one?

MS. FUMERTON: Yes, Your Honor.

THE COURT: I think we focused on the front of it.

MS. FUMERTON: And so he was -- Your Honor, he was only -- she was only asked about the first page, and the rest of it she was not asked about.

MS. FITZPATRICK: Your Honor, Laura Fitzpatrick for the plaintiffs. We're happy to work with --

THE COURT: There does seem to be a whole lot of stuff on the second and third page that wasn't discussed at all and would be confusing.

MS. FITZPATRICK: Yes, Your Honor. We're happy to work with Ms. Fumerton to see if there's some redactions that can be made to the attachment, but Ms. Hiland did testify that she was familiar with the attachment, so...

THE COURT: Well, all right. Let's work on the redactions on that one.

MS. FITZPATRICK: Yes, Your Honor.

THE COURT: All right. Any other objections?

MS. FUMERTON: Yes, Your Honor, to number 8, P-1442. How many 4s did I say? That's three 4s.

THE COURT: 14442. E-mail about compliance projects, fiscal year '13.

MS. FUMERTON: It's the same situation, we're okay with the e-mail but not with the attachment. That was never asked about.

MS. FITZPATRICK: Tara, 14442 there is not an attachment. What I'm seeing, there's just a three-page document that's just the e-mail.

MS. FUMERTON: So there is actually an attachment. If you're not offering the attachment, that's fine.

MS. FITZPATRICK: We're not. That's correct.

THE COURT: All right. Fine.

Any other objections? Looks not. So these following can come in.

14645, 21228, 02300, 26697, 21884, 26681, 14585, 20849, 26705, 26671. So 14442 comes in just the e-mail, and then work on some redactions on 17527.

Okay. Are the defendants offering anything with Ms. Hiland?

MS. FUMERTON: Yes, Your Honor. May I approach?

THE COURT: Yes.

MS. FUMERTON: We've given a copy of this to the plaintiffs as well.

THE COURT: All right. Have the plaintiffs looked at these?

MS. FITZPATRICK: Yes, Your Honor, we have. And we have no objection to some of them, but there are two that we do have objections to.

THE COURT: Okay. Well, let's cover those objections.

MS. FITZPATRICK: Yes, Your Honor. Our first objection is to Walmart MDL 1334, and I have a copy of that if Your Honor needs.

THE COURT: All right. That's the last one, okay, number 13 here.

MS. FITZPATRICK: Yes, Your Honor. This the fax that was sent, the state of Wisconsin administrative warning. There was no foundation laid. Ms. Hiland has no personal knowledge, and it's textbook hearsay.

MS. FUMERTON: Your Honor, actually she did say she was aware of it.

THE COURT: Let me see. I think it comes in for the fact it was -- she got it. Whether, you know --

MS. FITZPATRICK: Your Honor, we also have a 402, 403 objection.

THE COURT: I'm going to allow this in, you know, for the fact she testified about it and for the fact that it came, so I'll admit that over objection.

Any other objections?

MS. FITZPATRICK: Your Honor, no other objections.

THE COURT: Okay. Then the following come in without objection: 02300, 21228, 00134, 00142, 00299, 00318, 00397, 00568, 00575, 01027-01 and 01027-02, 01155, and 01194-01, -02, and-03.

MS. FUMERTON: And Your Honor, the last one is coming in as well, right? Number 13.

THE COURT: Right. Oh, 01334 comes in over objection.

MS. FITZPATRICK: Thank you, Your Honor.

THE COURT: Okay. So the only one left is Mr. Brunner. I don't know if we have any exhibits with him. We had his testimony.

MS. SWIFT: Your Honor, Kate Swift for Walgreens. We have two exhibits. We understand from Mr. Lanier they have no objection.

THE COURT: Which are those, Ms. Swift?

MS. SWIFT: WAG-MDL-2561.

THE COURT: Again, check the -- I think almost all the exhibits have five digits, Ms. Swift, so I --

MS. SWIFT: We can put a zero in front of it. I'm confident it's the correct number.

THE COURT: 02561, okay.

MS. SWIFT: And WAG-MDL-02562.

MR. LANIER: And no objection from plaintiffs, Your Honor.

THE COURT: Okay. Those come in without objection.

MS. SWIFT: Thank you, Your Honor.

THE COURT: Are the plaintiffs offering anything with Mr. Brunner? Probably not.

No? Okay. Then we're all caught up.

Okay. Anything else did anyone --

MR. STOFFELMAYR: Judge, Kaspar Stoffelmayr, just a question about your preference on one thing.

THE COURT: Okay.

MR. STOFFELMAYR: If we want to read into the record before the jury interrogatory responses, do you have a preference that we wait till the end or just do that whenever it makes sense to us?

THE COURT: Well, I think -- why don't you do it when it makes sense.

MR. STOFFELMAYR: Okay, thank you.

THE COURT: Either side can do that, where you think it makes sense rather than just out of the blue.

MR. STOFFELMAYR: Thank you.

THE COURT: So both sides can do that. We have an instruction on that. I was wondering if we would

have any. So you can if -- either side can do that at any time that you think is logical.

MR. STOFFELMAYR: Thank you. We may not. We're still discussing it. I just wanted to make sure we knew what your preference was.

THE COURT: Okay. Well, we're two minutes early so --

MR. LANIER: I could sing.

THE COURT: You may, Mr. Lanier. I'm not going to, all right? You've got the voice to do it, that's fine.

MR. LANIER: No, I better not, Judge.

THE COURT: I will cause an adjournment, so I'm not going to go there.

Who do we anticipate today?

MR. DELINSKY: Your Honor, Eric Delinsky for CVS.

We'll be calling Nicole Harrington first thing.

THE COURT: Oh, right, right. I remember that.

(Pause in proceedings.)

(The jury is present at 9:03 a.m.)

THE COURT: Good morning, ladies and gentlemen. Please be seated.

And I understand our next witness will be Nicole

Harrington.

MR. DELINSKY: Yes, Your Honor. I guess as a formal matter, CVS calls Nicole Harrington.

MR. HYNES: May I approach with the documents, Your Honor?

THE COURT: Sure.

Good morning, Ms. Harrington.

(Witness sworn.)

THE COURT: Thank you.

Please be seated. You may remove your mask while testifying.

And Mr. Delinsky, you may proceed.

MR. DELINSKY: Good morning, ladies and gentlemen.

May it please the Court.

And good morning, Ms. Harrington.

THE WITNESS: Good morning.

NICOLE HARRINGTON

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DIRECT EXAMINATION

BY MR. DELINSKY:

Q Question number 1. Does anyone call you Nicole?

A Just my mom.

Q What do you go by?

A Nicci.

Q N-I-C-C-I?

A Yes.

Q So if the jurors have heard testimony throughout the case against a Nicci Harrington, is that you?

A That is me.

Q E-mails and conversations?

A Yes, that is correct.

Q Do you work at CVS?

A I do.

Q Are you a pharmacist?

A I am.

Q For how long have you been licensed as a pharmacist?

A I've been licensed as a pharmacist for over 25 years.

Q And where are you licensed?

A I'm licensed in the state of New Hampshire.

Q The we're going to walk through your background for the jurors, but before we do that, I want to explain to the jury why you're here.

You don't work behind a pharmacy counter today, correct?

A I do not.

Q What's your current position?

A I'm senior director of Pharmacy Services at CVS.

Q And what do you do in that position?

A I lead a team, and we're primarily focused on

controlled substance dispensing.

Q Do you work on CVS policies?

A I work on policies that affect the content that I oversee.

Q Do you work on programs regarding the dispensing of controlled substances?

A Yes, I have a number of programs that I manage.

Q How long have you been in this position?

A I've been in the senior director position since 2016, but I was director of that -- of this group starting in 2012, so for a total of eight, almost nine years now.

Q And when you were director starting back in 2012, were your responsibilities more or less the same as they are today?

A More or less the same. I added some additional responsibilities when I became a senior director, but the core responsibilities have remained the same.

Q Okay. One last question before we go back in time.

Where is your office?

A In Woonsocket, Rhode Island.

Q Is that CVS's home office?

A It is.

Q Where do you live?

A I live in New Hampshire.

MR. DELINSKY: Can everybody hear her okay?

(Off-the-record discussion.)

BY MR. DELINSKY:

Q All right. Let's go back in time and start at the beginning.

Where did you grow up?

A Excuse me?

Q Now you can't hear me? That's a first.

Where did you grow up?

A So I was born in California. I lived in Rhode Island for a short period of time, but I really grew up in New Hampshire. I grew up in the same town that I live in today.

Q And I think you told me you moved to New Hampshire when you were five years old?

A Yeah, Nashua, New Hampshire.

Q Okay. So elementary school, junior high school, high school, all in New Hampshire?

A Yes.

Q What town in New Hampshire?

A Nashua.

Q Okay. Where do you live today? Same town?

A Nashua.

Q Okay.

A I'm boring.

Q How far from where you grew up?

A Actually, just a few miles.

Q Okay. Are your parents still in Nashua?

A They are. Both my dad and my mom.

Q And do they live close to you as well?

A They do. My dad lives in our childhood home, and my mom's in a long-term care facility there.

Q Are you married?

A I am. I've been married for 25 years. We just celebrated our 25th anniversary on October 6.

Q Okay. Where did you meet your husband?

A I met my husband in high school. We actually sat next to each other in Latin class. My maiden name was Grace, so Grace-Harrington, we sat next to each other forcibly, and then we started dating.

Q And have you been -- well, I don't want to pry, but have you been together ever since?

A Yes, we have.

Q All right. Kids?

A Two kids. I have two kids, age one 20 and one 18. They're both in college.

Q Okay. And am I right that your youngest one just left home to start college this fall?

A She did. I'm an empty-nester for the first time. It's a little uncomfortable. I'm still trying to get used to it and find my path now without my kids living under my roof.

Q Older daughter, am I right, is a lacrosse player in college?

A She is, she is.

Q Recent concussion. Everything good?

A Yes. She's on the mend. She still has a headache, but she's feeling much better. Thank you.

Q In ordinary times when you're going back and forth to your office every day, what's your commute look like from Nashua, New Hampshire, to Woonsocket, Rhode Island?

A It's about an hour and a half. It's 71 miles one way.

Q So 3 hours in the car a day?

A Roughly. Sometimes a little bit more, depending on if I'm leaving at peak traffic times.

Q Why? Why?

A I love what I do. I wanted to stay close to my family, so we remained in Nashua. We didn't relocate, but this job was important to me, so I took it, and I do the commute.

Q Okay. What made you interested in becoming a pharmacist?

A So I've actually worked in pharmacy since I was 15 years old. My first job was at a sub shop, but an independent pharmacy was two doors down, and the owner used to come in to get his sandwiches every day. And he offered me a job to work at the pharmacy, first in the front store,

but then after being there for like a month or so I worked in the back in the pharmacy.

And I worked with a pharmacist that loved people and loved taking care of people. And it instilled that in me, and I've always wanted to be a pharmacist.

I had a small crisis of conscience in which I thought I wanted to be a doctor in college, but I decided I did want to be a pharmacist.

Q Let's just step back and go over some vocabulary.

Independent pharmacy, what's an independent pharmacy?

A It's a single pharmacy that's owned by an individual. It's not part of our larger chain organization. I don't know at what point in time you trip from being an independent to a chain, I don't know what those numbers might be, but it's a much smaller kind of one-man mom-and-pop shop.

Q Okay. So let's go -- let's just step forward to this case.

A Walgreens, a CVS, a Walmart, they're chain pharmacies?

A Correct.

Q And independents are sort of the one-off sometimes, we call them mom-and-pop pharmacies?

A Yeah.

Q Okay. What was the name of the pharmacist with whom

you worked?

A Neil Abbondante.

Q Is that pharmacy still open?

A The Medicine World is still there today.

Q And do you go?

A I stop by there. My mom actually gets her prescriptions there.

Q You don't get your prescriptions there, right?

A No, I don't get my prescriptions there.

Q No, that would be disloyal sort of, right?

What did you do when you were working there -- well, I had one other background question.

You mentioned the word "front store" and then "pharmacy."

Can you explain to the jury what the front store is and how it contrasts with the pharmacy counter?

A Yeah, so in the front store, that's where you would find your greeting cards, your vitamins, your over-the-counter type medications, Tylenol, cold products. And I just worked in the front store ringing a register, dealing with the public.

And then in the pharmacy, obviously you're preparing prescriptions. When I was a technician, I would work to assist them. That was back a long time ago. Things were done with a typewriter. We had triplicate carbon papers

that we had to submit insurance claims on and things like that, so I assisted with a lot of those activities.

Q Can you give us a sense of what years we're talking about?

A Let's see. So that would have been, like, mid '80s.

Q Okay. The front store/pharmacy distinction, is that something that applies in CVS pharmacies?

A It does.

Q Okay. So the greeting cards, the soap, toothbrushes; front store?

A Yes.

Q Pharmacy counter is the pharmacy?

A Yes.

Q Okay. In your responsibilities today, do you have anything to do with the front store?

A I don't.

Q Okay. Your focus is exclusively on the pharmacy?

A It is. There may be cross-functional things that we do every now and again, like the front store might need a partner on something and they need a pharmacy perspective, so I might have individual small projects that I collaborate with them on. But that's not my -- like, I don't oversee the front store.

Q Let's keep going with our chronology of your career.

Did you go to pharmacy school?

A I did. I went to the University of Rhode Island.

Q Did you obtain your degree?

A I did.

Q What year did you obtain your degree in?

A In 1994 I got my bachelor of science in Pharmacy.

Q Okay. And at that point in time, you didn't get a PharmD, you got a bachelor in science to become a pharmacist?

A Yeah. At the time when I graduated, the PharmD was just being introduced. The University of Rhode Island had just created a program that you could attend for two additional years to become a PharmD, but the majority of people that were going to work in pharmacy got a bachelor of science at that point in time. It was, I want to say, probably maybe five years or so after that the degree changed, and you could no longer just get a bachelor's. You could only go and get a pharmacy doctorate degree.

Q So graduated in 1994. And I understand we may go back in time a little bit.

When did you join CVS for the first time?

A I joined CVS for the first time in my second year of college, so it was 1990.

Q Okay. And since you didn't have your degree, what was your position at the time?

A At that point in time, I wasn't even technically I

don't think considered an intern. I was just a technician at that point in time.

Q Okay. And what did you do for CVS as a technician?

A I would ring the register, count pills, that type of thing, type prescriptions in the computer system.

Q Did you work in a particular pharmacy?

A The CVS located in Meadowbrook, Rhode Island.

Q And I presume that was near the University of Rhode Island where you were in school?

A It was a little bit of a drive. It was hard to be able to get a job at a CVS because there were so many people going for pharmacy school that it was a highly competitive market.

Q After you graduated, what did you do? What was your first job?

A My first job was working as a pharmacy manager in Hudson, New Hampshire.

Q For whom?

A For CVS.

Q Okay. Can you describe to the ladies and gentlemen of the jury what it means to be a pharmacy manager?

A Yes. So I would oversee the day-to-day operations of the pharmacy. I had oversight for the technician staff, the pharmacist staff, and I would make sure to do, like, the scheduling and things like that to make sure that the

pharmacy would run safely and effectively.

Q Were all those tasks for one particular CVS pharmacy?

A Yes, one CVS, that CVS.

Q And did you fill prescriptions in that position?

A I did.

Q Okay. So you had a management role and a filling prescription role?

A Correct. It was both.

Q Okay. And were you -- did you have -- were you -- I don't know how to put this question, but I'll try my best, and you'll correct me if I don't get it quite right.

The bulk of your time was spent on the sitting pharmacist tasks, the filling prescriptions and being with patients, correct?

A Correct, correct. The management impact was minimal.

Q And that was in 1994, correct?

A Correct.

Q Okay. I skipped over something.

You obviously got your license before you started working.

A Yes.

Q Okay. And you got your license with the state of New Hampshire. I believe you already testified to that.

A That is correct.

Q What was the process? How did you go about getting

your pharmacy license?

A You have to take two exams and have to pass both of those exams to be able to practice, and so you take what's called a NAPLEX exam. That's a competency exam around all things like pharmacy. Those are the things that you learned in pharmacy school.

And then you also have to take what's called an MPJE exam, which is the law exam. And that tests you on both federal and state legal requirements before you can get your license. So you have to pass both of those parts.

Q Have you ever heard of the concept called, I can't keep a straight face when I ask, but corresponding responsibility?

A Yes.

Q Is that something you learned about in law school?

A It's something that I learned about in pharmacy school. I didn't go to law school.

Q I did, unfortunately.

In pharmacy school, that's something -- corresponding responsibility is taught, correct?

A Correct. It was taught in my law class in pharmacy school.

Q Okay. And then you're tested in order to get your license on pharmacy law as well, correct?

A Correct.

Q And you have to pass that test?

A Correct.

Q And you did?

A Yes, I did.

Q Okay. How long were you in this first pharmacy that you started in in 1994?

A To the best of my recollection, it was a couple years. After that, I went and I opened a new pharmacy in Manchester, New Hampshire.

Q Okay. New pharmacy, new CVS pharmacy?

A New CVS pharmacy, yes.

Q Okay. And what was your position in this CVS pharmacy?

A It was also pharmacy manager.

Q Okay. So same deal, where the vast majority of your time was spent filling prescriptions, but you also had managerial responsibility?

A Correct.

Q Okay. And how long were you in that position?

A Again, to the best of my recollection, it was two or three years.

Q Okay. So in this first stretch between these two New Hampshire CVS pharmacies, how long were you there, ballpark?

A About five years.

Q Five years, okay.

What did you do next?

A Next I became a regional healthcare manager for CVS.

Q Okay. And what did you do as a regional healthcare manager?

A As a regional healthcare manager I provided assistance to district managers in professional practice items related to the pharmacy. At that point in time, it was more focused around Board of Pharmacy relationships, patient safety issues that might come up that they might need an extra clinical lens to be able to help them speak to patients. It was those types of things. And I had responsibility for stores south of Boston and out to the Cape.

Q So approximately how many stores were under your umbrella as a regional healthcare manager?

A I'm having a hard time recollecting the exact number, but I believe it was a couple of hundred because there was somebody else managing, like, day-to-day operations, and I just served as an advocate on these certain topics.

Q Okay. We're going to get to a topic called -- where we refer to people as field leaders or field supervisors.

As regional healthcare manager, were you a field leader?

A I was.

Q Okay. What did you do next?

A In 2001 I went back to working in a pharmacy. I had

my first daughter, and I reduced my hours to 30 so I could remain full-time with CVS but still be able to take advantage of having my daughter at home with me.

Q Okay. I think we skipped over one step, so let me just walk you back.

Were you ever something called a pharmacy supervisor?

A That came later.

Q Ah. I was wrong. Okay. So you were, but I got the timing wrong. Okay.

2001, you are no longer regional healthcare manager, and you're now with the birth of your first daughter a sitting pharmacist again, correct?

A Yes.

Q How long were you regional healthcare manager?

A It was about two years.

Q When you returned to the bench -- and that's what you've taught me it's called, right, when you sit at -- when you work at the pharmacy counter, you call it the bench?

A Correct.

Q Not the judge's bench; different kind of bench, right, the pharmacy bench?

A No.

Q When you returned to the pharmacy, were you a pharmacy manager or just a staff pharmacist?

A I think I was a staff pharmacist in that first

position when I came back.

Q Okay. And what store were you working in?

A To the best of my recollection, I think it was the Derry, New Hampshire, store that I was in.

Q Okay. How far was that from home?

A At that point in time, we were living in Litchfield, New Hampshire. It was probably about 20 minutes, 15, 20 minutes from my house.

Q Okay. And how long were you a pharmacist in that pharmacy?

A I was there for a few years. I'm not sure of the exact timeline of how long I was there. Maybe three years, two years, three years.

Q Okay. And so now we're getting '03, '04-ish?

A Yep.

Q Okay. What did you do next?

A I went to the CVS in Londonderry, New Hampshire, after that, and I became the pharmacy manager in that location when I moved to that store.

Q Okay. So both filling prescriptions on an everyday basis and some managerial responsibilities?

A Yes.

Q And do you recall how long you were in that position as pharmacy manager?

A I was there again for a few years. I can't recall the

exact timeline, but after that I went to the CVS in the town that I live now, Nashua.

Q Okay. So in this stretch, post the birth of your daughter, serving as pharmacist in three different CVS pharmacies?

A Yeah.

Q Okay. And am I right, Nashua is just sort of over the line from Massachusetts, right?

A That's correct.

Q And that's your place of -- your hometown.

How long did you work in that pharmacy?

A I was there for about five years.

Q Okay. So does that bring us up -- I've lost track of our chronology -- 2010-ish?

A Yeah.

Q What happened in 2010?

A In 2010 I became a pharmacy supervisor.

Q What's a pharmacy supervisor at CVS?

A So a pharmacy supervisor at that time would have operational oversight for those particular stores. We would be working in partnership with another field leader called a district manager. They would have responsibility for the front store, but then they would also have oversight for the activities that we would be doing within the pharmacy.

But I owned, like, the profit and loss statement and

just general day-to-day operations of those pharmacies. When I first started, I had all the pharmacies in New Hampshire, but shortly after that they divided it into two districts, if you will, and I had one district.

Q Okay. And about how many pharmacies were in that one district?

A I think I had 17.

Q Okay. So let me just get this straight.

Is pharmacy manager now you're no longer filling prescriptions unless you do a fill-in shift or something, right? I'm sorry, as pharmacy supervisor.

A Correct.

Q Okay.

And you are essentially presiding over the pharmacy part of the store for approximately 17 stores?

A Correct.

Q Okay. Is this the kind of position where you're -- do you work in an office or do you travel around and visit?

A Mostly traveling around and visiting. We had one small office that many of us shared, and basically we just kept files there. But for the most part we were in store locations visiting, working with the pharmacists and spending time in the stores.

Q Okay. And your focus in that position was on pharmacy issues obviously, right?

A Correct.

Q Okay. And again, I just want to differentiate since I screwed it up myself, pharmacy manager is a position for one pharmacy?

A Correct.

Q And you're filling prescriptions at the same time?

A Yes.

Q Pharmacy supervisor, you're sitting over a large handful of pharmacies?

A Correct.

Q Okay. Is that another position that we call a field leader or a field supervisor?

A Correct.

Q Okay. What I want to do now, I want to stop our chronology for a second, okay? And I want to talk about your experience as a pharmacist filling prescriptions, okay? We can even put aside the supervisory roles that you held sort of in between and at the end.

What's it like to be a pharmacist?

A I loved being a pharmacist. I find it very rewarding working with patients. But it's a tough job. People are often coming to you not on their best day. They may have gotten bad news, they may be in pain, they may be sick. But, you know, over the course of time I've developed a lot of relationships with customers and patients, so I find it

very, very rewarding. But I think there's a yin and a yang to pharmacy.

Q The yin being how rewarding it is to help people and the yang being it's hard?

A It's hard.

Q What's sort of the core job of a pharmacist?

A The core job of a pharmacist is to be able to provide medication that's been written by a physician to a patient and make sure that it is provided safely, that there's no drug-drug interactions, and dispense that medication to patients.

Q Okay. Now, am I right that while the core job is to provide medicine to patients who need it, there's also a responsibility in certain circumstances not to provide the medicine?

A That is true.

Q Okay. Can you explain that?

A Yes. So pharmacists have a corresponding responsibility, and what that means is they can't fill a prescription that they know is not for legitimate medical purposes.

Q Did you exercise corresponding responsibility in your many years as a pharmacist?

A On a very regular basis.

Q Okay. And let's -- I'm just not good at these

chronologies. Are you talking that you probably worked as a pharmacist for approximately 15 years? Am I overstating it?

A That's about right.

Q Okay. How did you learn how to perform corresponding responsibility?

A I was introduced to it in my law class at the University of Rhode Island, but I can recall a specific instance when I was working as an intern at the store in Nashua downtown that I worked at later on as a pharmacist, but I was there as an intern. And I was working with my preceptor and --

Q Can I stop you right there?

A Yes.

Q I'm sorry to interrupt.

What's a preceptor?

A So they oversee your internship experience to make sure that you understand and learn the things that you should be learning while you're there.

Q And is that another CVS -- well, I guess you were an intern at the time. Was that a CVS pharmacist who --

A It was a CVS pharmacist, yes.

Q Okay. I'm sorry to interrupt. Keep going with --

A Not a problem.

So we were -- you know, it was a day at the store, and there was a Percocet prescription that had been presented

that he had decided that we weren't going to fill.

And so he had me tell the patient that we weren't going to fill that particular prescription. And it was my first experience doing that. I was super nervous.

And I told him, and I was behind the counter, and this patient got very, very angry and actually grabbed me by the lapels of my white coat and tried to pull me over the counter. And that was my first interaction, which was obviously not a good interaction. But through the course of experience and time on the bench and being exposed, that's how I learned to do it.

Q Okay. Now, that incident that you just described, that's not an everyday incident, right?

A No, no. That's an extreme -- unfortunately, it was one of my first experiences with it, but it was an extreme.

Q You mentioned Percocet. We probably all know that. What's Percocet?

A Percocet is an oxycodone product. It has oxycodone and Tylenol in it.

Q Okay. So you learn about corresponding responsibility in pharmacy school, correct?

A Correct.

Q And then you have an internship where that learning is enhanced --

A Correct.

Q -- by the preceptor, correct?

A Yes.

Q And did you have policies and trainings to guide you as well?

A Yes.

Q Okay. Is there continuing education?

A There is continuing education that's available, and it's the pharmacist's discretion on which courses they choose.

Q Okay. Am I right that this task of exercising corresponding responsibility, if you strip out the legal words, it's really a task of trying to find prescriptions that weren't written for real medical reasons?

A Yes.

Q Is that always easy or is it always hard?

A I think it's hard because, you know, people are coming to the pharmacy and there's many that need the prescription, so to be able to ferret out those that are trying to get it for nonmedical needs is really difficult.

And you ask questions to try to be able to get down to the bottom of it to really understand, but sometimes it's hard. And sometimes people are standing in front of you lying, and you're in a hard situation, and you're trying to balance those that are trying to get medication for not real medical reasons. But then the majority of patients are

looking to get prescriptions for the right reasons to be able to treat the right medical conditions. So you've got to balance those two things.

Q Here's a question that's sort of been lurking in the background at the trial.

Would it be appropriate, sort of feels right, in the face of an opioid epidemic or an opioid crisis, for a pharmacist to just say, hey, you know something, I'm not going to mess with anything. If there's, you know, the slightest sign on a prescription, I'm just not going there, I'm not going to fill it.

Would that be appropriate?

A No. I mean, there's patients that need pain medication. There are patients that are dying and are in pain, there are patients that have had horrible things happen to their body, and they need to be able to have access to pain medication to be able to treat those legitimate needs. It's not appropriate just to say I'm not going to fill any controlled substances or any opioids. It's just -- it's not humane.

Q And in your answer before you talked about balance. Could you explain more what you mean by balance?

A Yeah, the pharmacists are in the middle trying to make sure that we're keeping patients that need the legitimate medication, medication for legitimate medical reasons,

making sure we can provide them the right medication; but on the other side of the pendulum, we're also trying to prevent people that are trying to obtain it for bad reasons from not getting that medication. And it's trying to find the right place in between those two things to be able to make sure that we're satisfying our obligations on one side, but also maintaining legitimate access on the other side.

Q And is this a hard balance to strike?

A It is, because if you swing the pendulum too far in one direction, you're not doing your job the way that you would want to do.

Q Let's go back to the chronology. You're a pharmacy supervisor 2012, correct?

A Yes.

Q Okay. And I just want to stop at pharmacy supervisor.

CVS from time to time changes names and stuff like that. Today there's no pharmacy supervisor position, correct?

A There isn't. It's a district leader position.

Q And then there's these new things called DPPLs or something, right?

A Yes.

Q That provide some role at a higher level.

What are DPPLs?

A They are divisional professional practice leaders.

Q And that just reflects from time to time the company is reorganizing, changing company names, right, or changing position names?

A Right, correct.

Q What happened in 2012?

A In 2012, I came to the corporate office to take on the director of Pharmacy Professional Practice Standards role.

Q Okay. And it feels like you've been in that position nine years now?

A Yeah.

Q Okay. How did it come about?

A How did the position come about or how --

Q How did you rise -- somebody must have come to you and said, hey, would you be interested in this.

A Yeah, that's actually exactly how it happened. I was driving home from North Conway, which was my farthest north store, and it was raining. And it was really raining hard, and so I was driving in my company car. And my cell phone rings and it's a 401 number, so you know it's a number from Rhode Island. And I was like, oh, no, what did I do.

And I picked up the phone, and it was an SVP of Pharmacy Operations there, and he was calling to ask me if I would be interested in taking on this role down at the corporate office.

He said that they needed someone with deep pharmacy

experience, and he thought that I would be good for the job based on my pharmacy experience and my analytical mind.

I had never seen myself going to the corporate office. I thought it was a little bit maybe too stuffed shirt for me. I saw myself as a field leader. I saw myself rising in the ranks of the field leaders, taking on a region and maybe a division at some point in time.

And Mitch convinced me that it would be wise to go and sit with some people, to learn about the position. And I did, and I sat with some really, really smart people. And the interview was more just to challenge walking through some of the problems that they were facing, and it really lit my intellectual fire.

And I was excited to be able to take on a different challenge, so I threw caution to the wind, and I took on the role.

Q Okay. Describe the position back then in 2012.

A Yeah, so back then in 2012, I have -- I had a number of different programs to be able to mitigate risk for the company, and --

Q Let me stop you there. We'll get there.

Higher level, higher level. Let me bring you along.

You said you focused on controlled substances.

A Mm-hmm.

Q Correct?

A Yes.

Q Okay. Can you just very briefly, because I think we've heard this, did your role involve noncontrolled substances?

A No, no, it didn't include noncontrolled substances.

Q Okay. And very briefly, thumbnail sketch, what's the difference between a controlled substance and a noncontrolled substance?

A Controlled substances are scheduled by the DEA, and it's based on the level of addiction potential.

Q And a noncontrolled substance?

A Is things that you would be taking for, like, you know, Lipitor for your cholesterol or, you know, lisinopril for your high blood pressure.

Q Antibiotics?

A Antibiotics.

Q That kind of thing, okay.

Does CVS dispense more controlled substances or noncontrolled?

A Much more noncontrolled.

Q Not even close, correct?

A Not even close.

Q And I'm sorry to interrupt, but let's just walk through this carefully.

So the focus was on controlled substance, and then at

a high level, within the zone of controlled substances, what was your focus?

A So I had a store monitoring program, I had a prescriber program, I had an inventory control program. Those were some of the main programs that I was focused on.

Q Director of Professional Practices, correct?

A Professional Practice Standards.

Q So what does Professional Practice Standards mean?

A It just means operation of the pharmacy.

Q Okay. And your focus again was on the dispensing of controlled substances?

A Correct.

Q Okay. And when you came to your position, was there a particular focus on controlled substance pain medications?

A Yes.

Q Okay. That was a real big issue at the time, correct?

A It was.

Q Okay. And by the way, was New Hampshire one of the communities that had been hit hard by opioid issues?

A It definitely has. The rural areas and some of the city areas also have been very hard hit by opioids.

Q So let's again, speaking at a high level without getting into the particulars -- we'll move to that -- your group now that you've been leading for nine years -- oh, and let me just stop there.

Who do you report to?

A I report to Tom Davis.

Q Okay. And I think the ladies and gentlemen of the jury will recall Mr. Davis was the first witness in the trial.

He's your boss?

A He is.

Q Okay. And he hasn't been your boss the whole time; is that right?

A When I first started, I reported in to Papatya Tankut, but she was only in that role a month or so before Tom took over.

Q So again, at a high level, your group, the Professional Practice group, it operates programs regarding the dispensing of controlled substances, correct?

A Correct.

Q What's its -- does it have any role in policies?

A I oversee the policies that relate to the work that I do.

Q Okay. Does it -- are there any programs that the Professional Practice Standards group runs in the communities?

A Yeah, we have a number of community-based programs. We have a Pharmacists Teach program, in which our pharmacists go out into the community to be able to teach.

That's changed a little bit, and I think we'll talk about that maybe a little bit later.

And I also have a Drug Disposal program as well to install drug kiosks in our local locations and then in PDs across the country.

Q Okay. And in your role as director of the group, do you ever interface with DEA?

A I do.

Q Okay. Does DEA bring issues to the attention of the company if it identifies a concern?

A Sometimes.

Q Okay. And are you involved in meetings with DEA?

A I am.

Q Do you always agree with DEA?

A No.

Q Okay. Would you be involved in explaining to DEA why they have it wrong, in part or in full?

A Yes.

Q So you have the community programs, the dispensing programs, policies, DEA interactions.

Now, lawyers deal with a lot of the DEA stuff, correct?

A That is true.

Q Yeah, you're in a few meetings.

Anything else that we've missed at a high level?

A During my time as a director, no.

Q Okay. How about as a senior director?

A As a senior director I also have responsibility for drug loss reporting.

Q Okay. And to take the jargon out of drug loss reporting, that means when there's a theft in the pharmacy, that has to be reported somewhere?

A Correct. It has to be reported to the DEA.

Q Okay. And that's underneath you as well, correct?

A Correct.

Q Okay. How many people were in the group when you started in 2012?

A When I started in 2012, it was myself and three others.

Q Okay. Four people?

A Mm-hmm.

Q Okay. How many people are in your group today?

A Roughly 25. We have some puts and takes that happen occasionally, but --

Q Those 25 people, today in 2021, or the four people back in 2012, are they the only people at the company looking at safe controlled substances dispensing?

A No.

Q Okay. Who else, who else at the company is focused on those issues?

A I think first and foremost our pharmacists, right? Our pharmacists see those prescriptions every day and review those prescriptions before they fill them.

We have our field leaders that are also looking at those issues. We have our Asset Protection folks that are in the field looking for diversion issues, which controlled substances falls under that. We have our divisional Professional Practice leaders that are also in the fields working on these activities.

And then, like, up at the home office I have a whole Compliance group that serve as partners for us. I have a Pharmacy Operations department that helps us. We have a Legal department. We have a Regulatory department that I interface with regularly.

And then I also utilize our call center, because a lot of the work that we do, there's, like, outreach that has to happen to the stores or to prescribers to validate things, so we use a call center to do those functions so that we don't have to get in the weeds of, like, the day to day of that.

Q And the call center, is -- pharmacists operate the call center?

A There's pharmacists, there's technicians, there's non-pharmacists there too, but from my work, mostly it's pharmacists and technicians that help us on our work.

Q Okay. Analytics, did you mention that or --

A Oh, I forgot them. They're probably one of the most important people to be able to help me. I'm a pharmacist by training. I like numbers. I think that they're fun. But not like our analyst team, I don't have that depth of knowledge. We have people that are like, data scientists and are very versed in using tools like SAS and ARR, and I can't even think of all the names of the tools that they use, but they're very much more advanced than I am to be able to build some of the models that we use to be able to detect behavior that we would want to investigate.

Q So there are many different parts of the company, both in the pharmacy and in the field and at corporate who are working on these issues; am I right?

A Yes.

Q Back at the time you were a pharmacist, so now we're going back even before you joined this group with four people, was there oversight back then over controlled substances dispensing at CVS?

A Yeah, the field leaders were responsible for assisting stores with their exercise of corresponding responsibility or filling of controlled substances.

Q Okay. And there was still policies that covered the -- all CVS pharmacies throughout the country, correct?

A Correct.

Q Would I be right in saying that at the time you were a pharmacist, the supervision of dispensing occurred -- was focused on the field, but today -- Mr. Weinberger's going to object to my question, by the way, I can tell -- but today --

MR. LANIER: I object to Mr. Weinberger's objection before the question is out.

MR. DELINSKY: He is just gearing up. I know it's coming.

THE COURT: Maybe he was just turning his chair around.

MR. DELINSKY: It's been a long trial, Judge. I know what's coming. I'm going to try not to elicit an objection. Let me ask this.

MR. WEINBERGER: I'm good. Go for it.

MR. DELINSKY: Great, good. I'm going to go back to my question.

BY MR. DELINSKY:

Q Would I be right in saying that in the earlier years the supervision was field focused, whereas, you know, in more recent years, let's just put 2012 on it, it became more centralized at CVS?

A That's a fair statement. I did just characterize now that even though it's centralized, the field supervision is an important part of that centralized function. One

couldn't operate without the other.

Q So both are in play today?

A Correct.

Q Okay.

MR. DELINSKY: Thank you, Mr. Weinberger.

MR. WEINBERGER: Hey, no problem.

Q How many pharmacies does CVS operate throughout the country?

A Roughly about 10,000.

Q Let's break it down a little bit just to give the jury some color.

About how many pharmacies in Ohio, if you know?

A 380. 380 roughly.

Q So 380 CVS pharmacies in Ohio?

A Correct.

Q Florida, how many CVS pharmacies?

A 850.

Q 850 in Florida, okay.

If you look at all the pharmacies around the country, about how many CVS pharmacists?

A We have about 30,000 pharmacists.

Q Okay. In your responsibility -- strike that.

Are you responsible for a particular region, or do you operate programs and keep focus on the whole chain, all 10,000 pharmacies?

A Yeah, my focus is the entire chain.

Q Okay. I think we've already gone over this, and we don't have to beat a dead horse.

Are there people at CVS, are there leaders at CVS, who focus on a particular county, a particular state, particular region?

A Yeah, like a district leader would be responsible for stores in a small geography, and then there would be a region director which would have a larger geography, and a divisional vice president that would have yet even a larger geography.

Q You're none of those people, correct?

A I'm not any of those.

Q You don't have any particular expertise in Lake or Trumbull County versus Nashua, New Hampshire, whatever county that's in?

A Yeah, no.

Q Okay. Your responsibilities, am I right, are programmatic and they span the whole chain?

A That is correct.

Q Okay. And you're here to testify about the programs and policies that span the whole chain, correct?

A That is correct.

Q Okay. I think we're almost through your background, Ms. Harrington.

I have one last question. The New Hampshire Board of Pharmacy.

A Yes.

Q What is it?

A It's a group of people that are nominated by the Governor and confirmed by the Executive Council that help make sure that policies, regulations are up to date, and manage oversight for compliance investigations and making sure that pharmacy is run safely in the state.

Q Do you have any role or position with the New Hampshire Board of Pharmacy?

A I do. I'm a commissioner on the Board of Pharmacy.

Q Okay. And how long have you been a commissioner?

A It's probably been about three years, two years, three years.

Q And who asked you?

A I asked the Governor if I could serve on the Board.

Q And did the Governor appoint you?

A He did.

Q Who was the governor at the time?

A Governor Chris Sununu.

Q All right. Let's move on, okay? And what I want to do for everyone in the courtroom is let's just do a level set, okay, before we get into the -- your work.

Are CVS pharmacists perfect in exercising

corresponding responsibility and exercising their professional judgment?

A No. It's a hard -- it's a hard exercise. I think that they always tried to make the best decision possible.

I know that when I was on the bench, I know I tried to make the best decision possible, but I know that I didn't always get it right.

Q Is it fair to say that no pharmacist is perfect?

A In my opinion, I think that that's true.

Q Okay. The programs you run at CVS, okay, in your work at CVS, are your programs -- sorry to put -- are the company's programs, are they perfect?

A Again, the answer is no. And it pains me to say that because I want them to be perfect, and I strive for them to be perfect, but this is a really hard topic. And I make the best decision possible with the information that I have at hand, but I don't know that we get it right every time.

Q Okay. We've heard a lot in the case about the *Holiday* action in Florida.

Do you know about the *Holiday* action?

A I do. It happened before I took on this role, but I'm very well aware of it.

Q Okay. Am I right that was the case brought by DEA against two CVS pharmacies in Florida?

A That is correct.

Q Okay. Those two pharmacies were in one town in Florida?

A Yes.

MR. LANIER: Judge, I am going to ask that he not lead through this, please.

THE COURT: Okay. I agree.

Q What was the name of the town?

A Sanford, Florida.

Q Did CVS admit that the pharmacists in those two CVS pharmacies in Florida did not fully comply with their corresponding responsibility?

A Yes.

Q I think you already testified to this, but were you in your position at headquarters when the conduct DEA was looking at occurred?

A I was not.

Q Okay. Do you recall when that conduct occurred?

A I don't recall the specific dates, but it was prior, I think, to 2010.

Q Okay.

A To the best of my recollection.

Q Certainly prior to 2012, when you assumed your current position?

A Yes.

Q Okay. So you were in New Hampshire when that conduct

in Florida was occurring?

A Correct.

Q Okay. What happened to the two Florida pharmacies at issue in the *Holiday* case?

A They lost their DEA registration.

Q Okay. Did your group work on any response to that?

A Yes. Our store monitoring program, our Prescriber program, a number of the things that we do were built partly in response to that. We took that event seriously.

Q Okay. Let me step back.

Your group, did your group develop new programs in response to that incident?

A Yes.

Q Did those programs -- and you mentioned store monitoring and prescriber monitoring. We'll get into those.

Did they apply only to Florida, only to one town in Florida, or did they apply to all of CVS's pharmacies?

A We applied them to all of CVS's pharmacies.

Q Okay. Has CVS entered into other settlements with the DEA?

A Yes, we have.

Q Okay. And has some of that conduct occurred since you've been in your position?

A Yes.

Q Did some of the allegations concern conduct that

occurred before you assumed your role?
A Yes.
Q It's a mix of both?
A Yes.
Q Okay. Has CVS agreed with all the allegations?
A No.
Q Okay. With regard to these other settlements, has CVS taken them seriously?
A Yes. Anytime we have an interaction like that, we take it very seriously.
Q Even when the company disagrees with what DEA is saying?
A There's always an opportunity to be able to learn from those interactions and to be able to make our programs better.
Q Okay. So what has been the company's approach in recent years when DEA has identified a concern with a pharmacy or some other issue?
A We try to learn as much as we can from the situation and either make enhancements to the programs that we have or build new programs that maybe we haven't even thought of before, based on the facts and circumstances of the case that's before us.
Q One more related set of questions.
Is today -- is CVS more or less advanced today in 2021

than it was in 2011?

A More advanced.

Q Will CVS be more advanced in 2031 than it is in 2021?

A I hope so. If it's not, I might not have a job, but...

Q Why do you think it will -- the company will continue to advance?

A Because we're always striving to be better, you know, within our programs and trying to make meaningful improvements. And just because we have developed a program, we don't sit on our laurels and think that that's appropriate and that's going to cover us, because the environment is always changing. Individuals are trying to find new ways to be able to present with prescriptions and have them filled, and so we've got to be able to learn from what's going on and make modifications to our programs in order to appropriately respond to what's happening in the environment.

Q Do you think the fact that CVS continues to advance is a good thing or a bad thing?

A I think it's a good thing.

Q Okay. What I want to do now is I want to focus on the tools and resources in place at CVS over the years to try to identify prescriptions that aren't written for real medical reasons, okay?

A Okay.

Q Ms. Harrington, what's the -- here, I'm going to put up a little chart.

MR. DELINSKY: Could I please have the ELMO, Mr. Pitts?

Q What's the most basic common tool that CVS has to try to identify illegitimate prescriptions?

A We have 30,000 pharmacists that work across our 10,000 stores.

Q Okay. Would it be correct to say that the first filter on illegitimate prescriptions are the pharmacists?

A Yes, I think that's fair to say.

Q Okay.

A And I would even add to that that we have technicians working in those buildings too, and those technicians have eyes and ears even beyond what our pharmacists see, so they work together.

Q And do we have -- does the company have more technicians than pharmacists or the same, less?

A Yeah, we have about 100,000 technicians.

Q 100,000. So on top of the 30,000 pharmacists, about 100,000 technicians?

So let's focus on the pharmacists, the 30,000 pharmacists.

Do they all have their degree?

A Yes.
Q Are they all licensed by their respective states?
A Yes.
Q Have they all passed the law exam?
A Yes.
Q Are they all in good standing with their state Boards of Pharmacies?
A Yes.
Q Do they all receive guidance and supervision by CVS?
A Yes.
Q Okay. Does CVS have policies to guide pharmacists in their exercise of corresponding responsibility?
A Yes.
Q Okay. And when it comes to a prescription that a pharmacist believes is not written for a real medical reason, what is CVS's policy?
A We expect our pharmacists to not fill that prescription.
Q Has that always been CVS's policy?
A Yes.
Q Back when you started at the company in 1991?
A I don't know if it was expressly written that way in 1991, but that was -- the expectation is that you followed state and federal guideline -- federal regulations, and that was in policy, which corresponding responsibility was a

federal regulation at the time, so the expectation would have been that it would have been followed.

Q Okay. Ms. Harrington, I'm showing you what has been marked as P-20699. And that may be in the Redweld, the accordion folder on top. So 20699.

Ms. Harrington, do you recognize this exhibit as one of CVS's policies for the dispensing of pain medications?

A Yes.

Q Is this a fair, accurate, and complete copy of this 2010 Dispensing Guideline for Pain Management?

A Yes.

Q Okay. And we won't spend a lot of time going through all the provisions, but I just want to focus on a few.

If you could see number 4 in the bottom third of the page.

A I see it.

Q What does it say?

A It says, "Do not fill a prescription if you believe the prescription was not issued for a legitimate medical purpose."

Q Oh, I'm sorry, is there --

MR. HYNES: We can't see it. You've got to move it up.

MR. DELINSKY: Sorry about that. Sorry.

Q Okay. Let's go through this again, because I screwed

this up.

"Do not fill a prescription if you believe the prescription was not issued for a legitimate medical purpose."

Did I get that right?

A That is correct.

Q Since the time you've been a pharmacist to today, is that consistent with CVS's policy?

A Yes.

Q Okay. Now, you weren't in your position at headquarters when this policy came out, correct?

A That is correct.

Q Did this policy come out earlier?

A It was earlier. This was during the time when I was a pharmacy supervisor.

Q Okay. And I don't want to bore everyone spending too much time with the document, but I just want to point out one thing.

In addition to many provisions in here, this document makes reference to warning signs, correct?

A Correct.

Q Okay. And am I right that it provides a bullet point list of several, starting on the first page and then continuing on to the next page?

A Yes.

Q Correct?

Is this an exhaustive list?

A It is not.

Q Okay. And by exhaustive, I mean it doesn't set forth every potential warning sign there could be?

A Correct.

Q Would it be possible to put down on a document that was usable every potential warning sign that a pharmacist might face?

A I think the warning signs sometimes are based on facts and circumstances, and so pharmacists need to be using their brain as they're filling prescriptions to be able to identify them. There are common ones that are referred to which are some of the ones that are listed here, but I don't know that you could create an exhaustive list.

Q There could be warning signs that a pharmacist may see when she is looking at a prescription that have never been addressed in a policy guidance case, or anything like that?

A Correct.

Q But this one does talk about cash, right?

A Yes.

Q And it identifies combinations, correct?

A Yes.

Q Okay. And several others, all right.

Is this an example -- and we're going to get into some

other policies later, hopefully in a way that does not bore everyone.

But is this sort of typical of -- or representative of CVS's policies over the years?

A Yes.

Q All right. So we were talking about how CVS guides and provides resources for its pharmacists. We just briefly hit a representative example of a policy.

Does CVS provide training to its pharmacists?

A Yes. We provide training at least three times a year. We do biannual training twice a year and DEA training once a year.

And then in addition to that, for the pharmacist's performance review, their supervisor talks specifically about controlled substances and corresponding responsibility as part of that review.

Q Okay. So let's break it down.

At the end of every year, a pharmacist has to discuss or the pharmacist's supervisor will discuss corresponding responsibility with the pharmacist at the performance review?

A Correct.

Q Okay. What's that discussion look like? And you can't talk about any particular one you didn't participate in, but what happens there?

A It depends on the particular year, because we pull out topics that feel more pertinent at that time.

There's an overview of corresponding responsibility in general, but one of the first ones that I participated in building was we had an example prescription that had various red flags on it, and they would walk through the identification of those red flags with the pharmacy supervisor and the pharmacist. And then they'd talk about what those red flags meant, how they could be resolved.

So it was just like a hands-on exercise. We felt that it was good to have a live person sitting across from you, looking you in your eye and telling you how important these things were.

Q In the course of this process, does CVS sometimes ask its pharmacists to certify something after these one-on-one meetings?

A Yeah, there's a sign-off that they fully understand their obligations under corresponding responsibility. And each pharmacist signs those often. It's kept in their personnel file.

Q You talked about then two times a year, something, I think you termed it DEA training?

A Twice a year is biannual training.

Q Okay.

A So it has a number of different topics. Corresponding

responsibility is a portion of a larger training.

Q Okay. So twice a year through the biannual trainings, corresponding responsibility is discussed?

A Mm-hmm.

Q What's the I guess we'll call it the fourth training?

A Yeah, the DEA training, that's really focused on a lot of controlled substance topics. Corresponding responsibility is a little bit deeper in that particular training, as well as there's certain record keeping type activities that are explored there as well.

Q I think we've already talked about this, but does CVS have supervision in the field for its pharmacists?

A Yes. So we have the district leaders, we have the regional directors, we have the divisional vice presidents, and we have the divisional Professional Practice leaders.

Q What are job aids?

A Job aids are tools that we use. Sometimes trainings can be a little bit long, maybe a little dry at different points in time. So we use job aids as a tool to be able to provide them a high-level overview of the content. Often we include visuals to maybe spice it up a little bit.

Q And the job aids, they're disseminated to pharmacists?

A Yes.

Q Sort of periodically?

A Yes.

Q Okay. Are the policies available somewhere to pharmacists?

A Yeah, we -- we have a policy portal that they can just go in and look them up at any point in time. It's easy for them to toggle to that when they're working on the bench.

Q Is that something called RXNet?

A Yes.

Q What is RXNet?

A RXNet is our own CVS internal intranet. It's just a way for them to be able to go and access this information. There's a lot of different things that are on there.

Q How about sort of clinical resources, clinical information about the drugs a pharmacist may dispense. Does CVS make that available to pharmacists?

A Yup, on RXNet there's a number of different resources that are available to them to be able to obtain that information. And we've used different standard resources over the years.

Q Give me an example of one of the standard resources.

A One of the resources that I used was Facts and Comparisons. I'm trying to think of one of the more recent ones, like Horn and Hansten we used. There's a couple.

This is not -- the clinical resources is not my area of expertise. I'm struggling a little bit to be able to provide you specific names. Sorry.

Q No, no, no. Good.

MR. DELINSKY: Judge, it's between 10:10 and 10:15. I'm about to go to a different topic.

THE COURT: We'll go to about 10:30, and a convenient spot around then.

MR. DELINSKY: All right. Perfect, Judge.

Q All right. Tool number 2 to try to identify these illegitimate prescriptions.

Have you heard the word "RxConnect"?

A Yes.

Q What is RxConnect?

A RxConnect is our dispensing system. It's our computer system that we use to be able to dispense prescriptions.

Q Okay. Has RxConnect always been called RxConnect?

A No. We've had different dispensing systems over the years. Before RxConnect it was RX2000.

There was terminology before that, but I've lost that term.

Q So before RxConnect was RX2000. Before that, something you can't remember?

A Yeah.

Q Okay. And when you say system, do you mean computer system?

A Yes.

Q Okay. Is it the software on the computer or the

hardware, for all I know, that the pharmacists have to work through at the pharmacy counter?

A Correct.

Q And techs have to work through it too, as well, correct? Okay.

Can a pharmacist fill a prescription at CVS without going through RxConnect?

A No, no. We require -- you can't generate a label and fill a prescription without it. Even in down time we have backup tools to be able to use RxConnect, so you need to use that in order to be able to safely dispense a prescription to a patient.

Q Does RxConnect provide information to the pharmacist?

A Lots and lots of information.

Q Does RxConnect provide a patient profile to the pharmacist?

A Yes. RxConnect provides a patient profile that's a central profile so our pharmacists can see prescriptions that are filled not only at that CVS, but at the other CVSs as well. It's called a central profile. And they can see roughly two years worth of information. I think sometimes it may go a little bit longer, a little bit less.

Q Okay. Let's break this down.

You say that a pharmacist can see two years of information. What do you mean by information?

A So you can see their prescription filling history, so you can see the drugs that were dispensed, the doctors that dispensed it, how they paid for it, the quantity, and that's just on the quick snapshot. You can look deeper to be able to see the directions on all of those prescriptions, you know, things like that.

Q And that, I'll call it the prescription history that RxConnect provides, okay, that prescription history goes drug -- or prescription by prescription by prescription?

A Correct.

Q And CVS provides it back two years?

A Correct.

Q So a pharmacist when they go to the patient profile, they can see two years of the patient's past prescriptions?

A Correct.

Q Okay. And I think you also said that it doesn't just apply to the one store that the pharmacist is working in?

A That's correct. It applies to all CVSs.

Q So if you have a patient who lived in California for the first six months and then New Hampshire for the second six months but lives in Mentor, Ohio, today, you'd get the California, New Hampshire, and the Ohio prescriptions that that patient has filled at CVS?

A That is correct.

Q Okay. Does this -- well, have you heard the word "red

flags"?

A Yes.

Q Does this information that can be found in the RxConnect patient profile and prescription history enable a pharmacist to see red flags?

A Yes, things like if a patient has been paying with insurance and now they're paying with cash, you can see that very quickly because there's a condor code or code that signifies what type of method that they paid with. So it's really easy to be able to see a change like that. You can also see distance. You can see the patient's address. And obviously you know where you are. You can also see the prescriber's address.

And so knowing where all three of those things are is helpful in identifying red flags. And those are just a couple of examples.

Q Could you potentially see doctor shopping?

A Yeah, because you can see multiple doctors in the profile.

Q Could you potentially see overlapping pain prescriptions?

A Yeah, because you can see the filling history and you can see the dates on which they were filled and how long those prescriptions should last that patient.

Q Could you potentially see potentially dangerous

combinations or cocktails?

A Again, yes, you can see the prescription filling history, so you can see those readily.

Q Okay. Important question. For approximately how long has RxConnect or RX2000 provided this two years of prescription history?

A The two years of prescription history I think is as long as I've been a pharmacist, but the key was the central profile that you could see filling at other CVSs. And that happened somewhere between 1999 and 2000, I think, to the best of my recollection, depending on like the rollout and what stores got it. I think it straddles those two years.

Q So the chain-wide two years of prescription history that might allow -- that allows pharmacists to identify red flags goes back 20 years or so?

A Mm-hmm, yes.

Q Okay. We've heard a lot of testimony in this case about PMPs.

A Mm-hmm.

Q What are PMPs?

A PMP is the prescription monitoring program. It's a tool that's provided by the state that takes all of the dispensing information from all of the pharmacies, for controlled substances, and puts it in one place.

Q Okay. And I think you said this is provided by entire

states, correct?

A Yeah, the individual states run it.

Q Do you know what OARRS is?

A I do.

Q What's OARRS?

A OARRS is Ohio's PMP.

Q Okay. Does OARRS or another PMP, is it limited to CVS pharmacies?

A No. You can get Walgreens, Walmart, independents. Everybody's required to send their controlled substance dispensing that is a dispenser in this state.

Q So a state PMP like OARRS will provide a prescription history for a patient for all the pharmacies in the state?

A Correct.

Q Does CVS have access, other than by going through the PMP, does CVS have access to that prescription data from other pharmacies?

A No.

Q No, okay.

So CVS couldn't build its PMP like OARRS because it doesn't have Walgreens' data and Walmart's data and Overholt's data, correct?

A Correct, correct. And even today you can only as a pharmacist access the PMP on a patient basis. So only if you have a prescription and pursuant to patient care for

that particular patient can you access PMP.

Q Okay. So now let's go back to 2000 or so, when CVS put in place this -- the prescription history, made available to its pharmacists the prescription history for a patient, covering all of its stores.

Was that sort of a mini CVS PMP?

A Yeah, I guess you could call it that, because we could see all of the information from all of the CVSs.

Q And was it the best PMP that CVS had the data to build?

A Yes.

Q Okay. And did this RxConnect CVS PDMP that was in place, we'll call it 2000, did that come before most state PMPs?

A Yes. I think OARRS started in 2006, so it was prior to that. And then states like mine in New Hampshire, we didn't have a PMP until much, much later.

Q Okay. All right. One last set of questions on RxConnect, okay?

When a pharmacist processes a prescription through RxConnect, does the pharmacist verify the prescription?

A Yes. That is the last action on a prescription is the verification action, and it's a pharmacist checking to make sure that everything's been entered correctly, there is no drug interactions that need to be resolved, that the

medication is what it is.

And as part of that certification process, if you will, verification process, each pharmacist has independent credentials that they receive in the morning to be able to verify out that particular prescription, either by a bar code or an alphanumeric code that they use to be able to certify that they've verified it.

Q What did it mean to you when you verified a prescription through RxConnect?

A It was kind of my legal stamp that the prescription was true and accurate and correct. And I don't know if it's the right terminology because I don't know if there was any legal requirement for that, but that was kind of my thinking about it.

Q Okay. All right. Let's move on from RxConnect.

Does CVS have a system to validate whether the doctor who signed the prescription that the pharmacist's filling is licensed?

A Yes. We have a system called Prescriber Validation. We use a company called LexisNexis to be able to get information, so that way when a pharmacy is filling a prescription and they've typed in, you know, a doctor's information, that information passes through multiple stage gates to validate a number of different dimensions to make sure that that prescriber is appropriately licensed and

certified to be able to dispense that particular medication.

Q Okay. So there's a database, and information about licensing's put into that database by LexisNexis, correct?

A Correct.

Q Okay. And that's regularly updated?

A Yes.

Q Okay. And that sort of identifies who is licensed?

A Correct.

Q It identifies --

MR. LANIER: Judge, I'm going to object to him leading through this.

THE COURT: I'll allow some leading, but this is a little too much, Mr. Delinsky, so --

MR. DELINSKY: Understood, Judge.

Q Does it also identify what doctors have had a license revoked or suspended?

A It does. It shows if their license is revoked or suspended. I think it also shows state license information, if that is active or if it's been revoked or suspended.

I think there's -- and best of my recollection, I think there's 35-plus validations that occur on a prescriber before it reaches the final -- it can go forward with filling those prescriptions.

Q Okay. Now, let's -- can you explain for us from a pharmacist's perspective sitting in the pharmacy how this

works? What does this program mean to them?

A Yeah. So when you're typing a prescription, if a prescriber hits on one of these parameters and we can't proceed with filling the prescription, the pharmacist gets like a pop-up reject message, and the system doesn't allow them to continue the filling of that particular prescription.

Q Okay. So parameters, what do you mean by parameters?

A You know, once it hits any of these license checks.

Q Okay. So sitting in a pharmacy in CVS pharmacy, let's call it 2015, and let's suppose a pharmacist has had the week before, two weeks before, a license suspended by DEA.

Pharmacist gets a prescription from that doctor --

THE COURT: You mean the doctor's license was suspended?

MR. DELINSKY: Oh, my God, Judge, yes. Yes.

THE COURT: Okay. Thank you.

MR. DELINSKY: Yes.

Q So the doctor has had his license or registration suspended by DEA two weeks before.

A Mm-hmm.

Q Patient brings in a prescription from that doctor. The pharmacist -- or the tech puts in the information about the doctor.

What then happens in the system?

A There's a block that comes up, and so the pharmacist would have that information that the DEA registration is no longer active. I'm not clear as to whether or not it gives details on the reasons why, but it would just explain that the DEA is no longer active, and the pharmacist couldn't continue on with the fulfillment of that prescription.

Q Okay. And can the pharmacist fill that prescription?

A No. The system won't allow it.

Q Can the pharmacist even print a label?

A No.

Q The system blocks it?

A Yes.

Q Okay. Now --

MR. LANIER: Your Honor, I hate to interrupt, but for clarity's sake, could we get a year for this?

MR. DELINSKY: I'm doing that right now, Mark.

THE COURT: I think Mr. Delinsky said 2015. I heard it in the question.

MR. DELINSKY: Well, that was one hypothetical, but we're going to that right now. Mr. Lanier raises a great point.

THE COURT: All right.

Q I have in my -- well, you'll all object -- but to the best of your recollection, when did the company begin to roll out this validation system?

A To the best of my recollection -- I really am not sure of the year. I want to say -- I'm really not sure. It's changed over time, and they've made enhancements. We went from HMS to LexisNexis.

Q 2012-ish for the start?

A I think it was even before that.

Q Okay.

A My recollection is maybe 2011.

Q Okay.

A But I am not a hundred percent sure on that date.

Q Was it in place by -- in its first incarnation in 2013?

A To the best of my knowledge, yes.

Q Okay. And you raise a really good point. You talked about all the different checks it does today. Wouldn't it be accurate to say that that system evolved over time?

A It did.

Q So more and more checks were added to it than were included in, say, 2012?

A Correct.

Q Okay. But even back at its inception, let's call it 2012, it still worked the same way; am I right about that, that there would be a block at the pharmacy level?

A Correct.

Q Okay.

MR. DELINSKY: Your Honor, it's 10:30.

THE COURT: This would be a good time? Okay. Thank you, Mr. Delinsky.

All right, ladies and gentlemen, we will take our usual mid morning break. Usual admonitions apply. And then we'll pick up with more of this witness's testimony.

(Recess taken at 10:30 a.m.)

(Jury present in open court at 10:50 a.m.)

THE COURT: Please be seated.

Ms. Harrington, you're still under oath.

And you may continue, Mr. Delinsky.

BY MR. DELINSKY:

Q Ms. Harrington, we're still walking through the tools that CVS has put in place to try to identify prescriptions not written for real medical reasons, okay?

A Okay.

Q Does CVS have a program to monitor doctors and other prescribers?

A Yes. We call it our Prescriber Monitoring and Intervention program.

Q Okay. And when did CVS implement this program?

A In 2012.

Q Is this one of the programs that falls within your group?

A It is.

Q Am I right, this program's been in place approximately nine years now?

A Yes.

Q Was this prescriber monitoring program, doctor monitoring program, was this one of the programs that CVS put in place in the wake of the *Holiday* case in Florida?

A Yes, it was.

Q Can you explain to the jury how it works?

A Yes. So we take our dispensing data at CVS, and we run an algorithm, which is just a fancy way of saying a bunch of mathematical equations, on that data.

We look back in the most previous six months, and we use that data to be able to detect outlier patterns of behavior associated with the prescriptions for those prescribers.

We look at them in certain geographies and we look at them by specialty, and we can see doctors that are outpacing their peers in certain areas.

Q Is it just one algorithm or is it multiple different algorithms, or don't you know?

A It's multiple algorithms for different drug groups. For each drug group there's an algorithm. You can call it multiple algorithms though, I guess, based on specialty. But as we continue to innovate, we're adding more and more algorithms on to that methodology.

Q And how often does CVS run prescribers through this algorithm process?

A Through the algorithm process that we developed in 2012, we would run it quarterly on the prior six months worth of data. But as we continue to innovate, just recently within this past year we're testing a new methodology in which we would be running monthly, and it would be based on the three months prior of data.

So like Mr. Delinsky had talked about before, that we continue to try to innovate and get better and do different things with the information that we have.

Q So let's put aside the most recent potential change, quarterly. So CVS is running prescribers through the data four times a year?

A Correct.

Q So how does CVS decide or does CVS decide that particular prescribers should be run through the data, or does it run everyone through the data -- or through the algorithms?

A Yeah, it runs everyone through the data that has controlled substance dispensing. We do have prescribers within our database that don't have any controlled substance dispensing, but if they are positive for that, then they get run through the database.

Q So every doctor who has written a controlled substance

prescription that was filled in the last six months is run through these algorithms four times a year?

A Correct.

Q Okay. What happens then? You go through the algorithms, and I think you used the word outlier, an outlier doctor is identified.

What happens?

A So from there, my team will investigate that doctor to the best of their ability using some of the resources that we have. So they will look on a Board of Medicine website to see if there's been any sanctions against that particular provider.

They might Google Map their office location to be able to see where their office is, what the exterior of that office building looks like. They'll look to see if they can find any board certifications that might explain some of the information that we're seeing.

They might look at -- there's lots of different places that people can review providers. Healthgrades and Vitals, people can leave comments about prescribers. We'll look at those, although you have to take those with a grain of salt.

So we do as much investigation as we can to try to resolve our concerns potentially by finding more out about that particular prescriber.

Q Is that part of that process with your -- the people

who are looking at the prescriber to dig deeper into the data, too, and to try to see -- understand the data better?

A Yeah, we might look at the granular data. So the algorithm is kind of aggregating and putting everything together, and sometimes in the law of averages you miss, like the important things. So we look at like the individual prescription information to make sure that there isn't anything that we should know more about that doctor before we make a decision on how to move forward with them.

Q And then after this sort of, you know, review stage occurs, what happens next?

A So if we haven't been able to resolve our concerns, then we would reach out to that prescriber and request a telephone interview with him to be able to ask additional questions.

There are times though that we do resolve our concerns through our investigation. And just one example to be able to illustrate that to you, is we have a dentist that had popped on the algorithm, and then when we did our investigation, we understood that he was an oral maxillofacial surgeon, so he was doing reconstruction on people's faces. And when he was being compared to other dentists that are more likely to be just cleaning teeth and things like that, obviously he was flagging as an outlier. But understanding more about his specialty gave us cold

comfort that he was practicing in a normal practice.

Q What happens if a doctor says no, CVS, I'm not going to interview with you?

A We stop filling their controlled substances because we can't resolve our concerns.

Q What happens if CVS conducts an interview of the doctor and still can't resolve its concerns?

A We would stop filling prescriptions for those -- for that prescriber.

Q What do you call it when the company stops filling prescriptions for a prescriber?

A We call it suspending the doctor, but we don't have any outside authority over the doctor. It's just that we stop filling those prescriptions.

Q Okay. And do you stop filling all prescriptions or only controlled substance prescriptions?

A We stop filling controlled substance prescriptions.

Q Okay. As we sit here today, approximately how many doctors or other prescribers has CVS suspended from its pharmacies since 2012?

A About 850.

Q Now, I want to ask you a question on the flip side of that.

Is it a high or small percentage of the doctors that the company suspends once they pop on the algorithm?

A It's a small percentage.

Q Why is it a small percentage?

A Because we're looking for outlier behavior.

Q No, I'm sorry, my question was bad. My question was bad, Nicci.

Once a prescriber flags --

A Yeah.

Q -- so the algorithm says, okay, we have a potential outlier here, does CVS suspend nearly all of those or a smaller slice of those doctors?

A Most of the doctors were able to resolve our concerns when we get on the phone with them to talk to them. Most have a reasonable explanation for what we're seeing within the data, or they might have very, very strict policies and procedures in place around actions that they take to be able to protect their patients.

They'll do urine toxicology on a regular basis, they'll do pill counts, they do various things to be able to make sure that the prescriptions that they're writing are being used appropriately. So those are some of the things that we look for.

Q So a really small percentage ultimately are suspended?

A Mm-hmm, yes.

Q Are there other ways that a doctor can flow into the review program?

A Yeah. So one of the other primary ways is that our pharmacists can raise a prescriber that they have a concern about. So they see prescriptions day to day in the store, so they may see things differently from how I can see things just from the data. So we have a method that they can submit a doctor's name and then we review a doctor, and we go kind of through that same process of doing all of that Google research, if you will, and then deciding whether or not we're going to interview those particular providers.

We also get information from some of our other programs. So this is in our Prescriber program, but if we're taking an action in a store because of our Store program and the store says, oh, well, there's a prescriber that I'm concerned about, that information would then come over to the Prescriber team for them to then investigate.

Or with some of the other inventory-type activities that we do, if they are on the phone with the call centers, they're calling about an ordering limit and they say, well, we're seeing a lot of new prescriptions from doctor so-and-so, that information again will flow back to this program.

So the programs talk to each other to make sure that we're capturing the information and the right hand knows what the left hand is doing.

Q When a doctor pops as an outlier on the algorithm or

is escalated from a pharmacist, is that a doctor that continues to be licensed, registered by DEA and her or his state?

A To the best of my knowledge, yes.

Q And am I right, that many of the doctors if not most of the doctors that CVS is suspending through these programs are still licensed?

A Most are.

Q Let's talk practically speaking how it works from the perspective of a pharmacist.

CVS suspends, you know, Dr. Smith. Dr. Smith writes a controlled substance prescription. It's presented to a pharmacist in Willoughby, Ohio.

What happens?

A Yeah. So this is very similar to that Prescriber Validation that I talked about earlier. The technician will be typing in the prescription. A block will come up and say CVS is no longer filling controlled substances for this particular provider. There's a couple of talking notes to be able to return the prescription to the patient.

But they can't proceed with filling those prescriptions. The block prohibits them from doing that.

Q Will RxConnect even allow them to print a label?

A No.

Q Important question. What does it mean if CVS decides

not to suspend a doctor after the doctor has gone through the process?

A The thing that's important when we don't suspend a doctor is that that is in no way to be interpreted as us blessing the doctor. I think that's probably bad language to use, but blessing the doctor. And we make it very clear to our store teams that they need to continue to exercise corresponding responsibility on each individual prescription.

Sometimes there's just not enough information for us to be able to move forward with taking an action at the corporate level, but that doesn't mean that our store team still can't decide if they are not comfortable filling prescriptions for that provider. They can continue to do that.

Q When CVS decides not to suspend a doctor, is it communicating to CVS's pharmacists that they now should fill all of that doctor's controlled substance prescriptions?

A No.

Q Is it difficult and hard to decide what doctors to suspend and what not to suspend?

A Yes. We typically have healthy debate over it.

Q Okay. What makes it -- so I said is it -- I lost track of my question.

It's hard?

A It's very hard.

Q What makes it hard?

A The decision is often not clear. And we're making decisions that could impact patients that have a legitimate need for those prescriptions. So it's a -- I as a pharmacist take that decision very, very seriously because I don't want patients that need medication, and it's legitimate, to be cut off from not being able to get their medication at their local pharmacy with their pharmacist that they trust.

So I take that obligation very, very seriously when I'm making that decision. There are some cases where it's clear that the decision should be made that we suspend a particular provider, but in many instances it's not clear.

And so it becomes a challenging discussion, and there's a few of us that make that final decision when we're going to suspend a provider.

Q Has CVS ever been found to be too aggressive in suspending a doctor?

A Yes.

Q When did that happen?

A Just recently.

Q And tell us what happened.

MR. WEINBERGER: Objection, Your Honor.

THE COURT: Overruled.

A So we suspended a doctor. His volume had increased dramatically, and there were various red flags associated with the prescribing that we were seeing. We suspended him, and he put in to have a temporary restraining order, and it was granted by the judge. And the judge instructed us to --

MR. WEINBERGER: Objection, Your Honor.

THE COURT: Well --

MR. WEINBERGER: Hearsay.

THE COURT: Well, if there was a court order, you can describe what you were directed to do.

THE WITNESS: Okay.

A In the court order, the temporary restraining order instructed us to lift the block and fill prescriptions, controlled substance prescriptions, for the provider.

Q Ms. Harrington, I'm showing you what's been marked as CVS-MDL-04954.

Is this the order entered in the case that you just discussed?

A It is.

Q We'll come back to that in a sec.

Did this case concern a Dr. Hansen?

A It did.

Q And where was Dr. Hansen licensed?

A He was licensed in Kentucky and Ohio.

Q What was Dr. Hansen's specialty?

A I don't recall off the top of my head if he was general medicine or if he was pain medicine. I can't recall.

Q Okay. Dr. Hansen, I just want to make sure I have the chronology right, he filed a lawsuit against CVS?

A He did.

Q And let's go back to Exhibit 04954. This is the order in this case.

The lawsuit -- was the lawsuit filed in Kentucky, to the best of your knowledge?

A Yes.

Q And was it filed in Federal Court like this one?

MR. LANIER: Judge, I'm going to object to leading through this.

THE COURT: Well, sustained.

You can ask the witness if she knows what this case was about.

Q What kind of court was this case filed in?

A It was filed in the United States District Court in the Eastern District of Kentucky.

Q Okay. And I just want to focus on one part of this. I'd like you to focus on paragraph 2 on page 2. Okay?

And it says, "Plaintiffs are likely to succeed" -- "plaintiffs" is the doctors, right?

A Yes.

Q -- "on the merits of their claims that defendant" -- that's CVS, right?

A Correct.

Q -- "has interfered with plaintiffs' relationships with their patients by refusing to fill prescriptions written by plaintiffs, and defendant has done so without evidence that plaintiffs have violated any law or professional protocol related to such prescriptions."

Do you see that language?

A Yes.

Q Okay. And do you recall seeing that from the order?

A Yes.

Q And by the way, this order just came out this past August, right?

A Correct.

Q What are the difficulties CVS must face in determining, like law enforcement does, in collecting evidence that there's actual criminality or illegality?

MR. WEINBERGER: Objection, Your Honor.

THE COURT: Sustained.

Q Does CVS face impediments when it reviews and investigates doctors?

MR. WEINBERGER: Objection.

THE COURT: Let's go on the headphones a minute.

(At side bar at 11:10 a.m.)

THE COURT: All right. Mr. Delinsky, are you asking her if she and her unit faces impediments?

MR. DELINSKY: Yes.

THE COURT: Well, then let's be specific. She can describe the process she goes through, she and her unit, if she's done it.

MR. DELINSKY: All right.

THE COURT: But not lead her. I mean, you know, find out, you know, what she does and what she's able to do and what she's not, and if someone prevents her from getting anything, any information, she can relate that.

MR. DELINSKY: Okay. Thank you, Your Honor.

(In open court at 11:10 a.m.)

BY MR. DELINSKY:

Q Ms. Harrington, in your group when you and your colleagues are reviewing doctors, are there any limits on the tools at your disposal?

A We use the Google review that we do and we rely on a prescriber telling us an accurate picture of what they do on the telephone. But we don't have the ability to go undercover and pose as a patient to be able to understand more about that prescriber's practice.

Q Can you issue subpoenas like law enforcement can?

A No.

Q Okay. Can you conduct surveillance like law enforcement can?

A No.

Q Is it difficult to develop evidence that a particular doctor has in fact violated the law?

A It is. Oftentimes we're just looking for inconsistencies within the data and what they're verbally telling us as a means to get to a concern that the prescriber might not be being truthful with us.

Q Okay. And I'd just like to go through the rest of this order. And I'd like to point out the very bottom.

It says, "It is ordered that defendant CVS Pharmacy, Inc., its officers, agents, servants, employees, attorneys, and other persons who are in active concert or participation with it, be and are hereby enjoined from refusing to fill prescriptions written by Kendall E. Hansen for any pharmaceutical product."

Do you see that language?

A I do.

Q And is your understanding of the impact of the order consistent with that language?

A Yes.

Q Was CVS prohibited from -- by this court -- not this Court, by this court, from refusing to fill any prescription written by Dr. Hansen?

A Yes.

Q Let's go back to the program itself.

Did CVS ever -- I'm sorry, did DEA ever instruct you to create a prescriber suspension program?

A No.

Q Did any state Board of Pharmacy ever instruct you -- instruct CVS to create this program?

A No.

Q Did DEA or any state even suggest that CVS might create such a program?

A Not to my knowledge.

Q Was this program available to provide by a software company or something on the open market?

A No, you couldn't just go buy it from a vendor.

Q Did CVS have to create this program from scratch?

A Yes. We employed a company, AGI, to be able to assist us and partner to be able to create this innovation.

Q Okay. To the best of your knowledge, at the time CVS implemented this program in 2012, did any other pharmacy have it?

A Not to my knowledge.

Q Okay. Let's just take a step back. And we have the validation program and the suspension program, correct?

A Correct.

Q Okay. Am I right that both are literally blocking

prescriptions from being filled at the pharmacy level?
A That is correct.
Q Okay. And do the pharmacists have any role to play whatsoever with those prescriptions, given they are blocked?
A No.
Q Is it completely taken out of their hands?
A Correct.
Q Okay. Do these programs, these two programs working together, Prescriber Validation and Prescriber Suspension, essentially take these problematic prescriptions off the pharmacist's plate?
A That is correct.
Q Just takes it away, they can't be filled?
A Correct.
Q Let's keep going.
Does CVS provide realtime alerts to its pharmacists?
A We have a number of different alerts that we employ for our pharmacists.
Q Okay. And when these alerts -- when an alert is triggered, do they appear in RxConnect?
A Yes.
Q Okay. Does CVS have an early fill alert?
A We do. It prompts so that way a patient can't fill a prescription more than two days early from the date that it was picked up through the register system.

MR. LANIER: Can you give us a time frame, please?

MR. DELINSKY: Great question.

Q When was the early fill alert put in place?

A It was put in place in 2014, to the best of my recollection.

Q Okay. So when that alert triggers, a patient's coming to the pharmacy more than a couple days early to fill a prescription, is that a block or does the system give the pharmacist discretion?

A It gives the pharmacist discretion, because there are instances in which people -- you might want to go on vacation, so you might need your prescription early. But what we ask the pharmacist to do is to call the doctor to validate that it is a consensual decision to allow that patient to get that prescription earlier in that circumstance.

Q Does CVS display DUR alerts through RxConnect?

A Yes, there's a number of different DUR alerts that pop; drug-drug interaction, so if two medications taken together can cause an interaction, drug dosing, and things like that.

Q Do those DUR alerts pop on prescription opioid pain medications?

A Yes, depending on the medications that are being

filled, potentially.

Q Okay. And I think we all know this by now.

What is DUR? What does it stand for?

A Drug utilization review.

Q Okay. And am I understanding you correctly that that may give pharmacists information that this is a high dose or there's a potentially dangerous interaction?

A Yes.

Q How long have DUR alerts been in place at CVS, as best as you can remember?

A To the best of my recollection, I feel like they've always been in place.

Q Okay. And where does -- who prepares the science behind these alerts?

A We use a company called FDB.

Q What is FDB?

A First Databank.

Q And they're making the judgments about what -- sorry -- about when an alert should pop or not pop, right?

A They're defining the -- those alerts, what those alerts are. There's two different companies that do that. FDB is one of them.

Q Does CVS separately have something called an Opioid Risk Module that provides alerts?

A Yes. So the Opioid Risk Module is something that we

worked with FDB to create that has specific alerts around combinations of medications that were more enhanced, providing more direction to the pharmacists on actions to take. And it also shows the cumulative MME for a patient. So not just the MME for that particular drug, but the MME across that patient's therapy at CVS.

MR. LANIER: Can we get --

MR. DELINSKY: I got it. Next question, Mark.

Q And when did the Opioid Risk Module come into place?

A Oh, goodness.

Q Ballpark. I'm thinking 2018, 2019?

A Yeah, I believe to the best of my recollection 2018.

Q Okay. Got it. All right.

Does the system provide alerts to pharmacists for potential forgeries?

A Yes.

Q Okay. Could you explain how that works?

A We have a couple of different alerts that are used for forgeries. We have patient-level alerts, so that way if we identify a particular individual has passed a forged prescription at CVS, or attempted to pass a forged prescription, we enter a note that indicates that for the pharmacist. So that way, if that patient tries to pass an additional forged prescription, that note will come up.

And then we also have a prescriber alert, so that way

if a prescriber has been the victim of forgeries, so if their prescription pad was stolen out of their offers, and we understand that, we can put an alert in for that prescriber. So that way, again, when a pharmacy is filling prescriptions, it will pop up, it will let them know.

And this is one that they can bypass. In that comment we ask them to call the doctor to verify a controlled substance before filling it in those particular circumstances.

And then we also have realtime alerts on some of the algorithms that we've built to identify forgeries because of changes in prescribing patterns.

Q Okay. Let's stop there.

CVS has built algorithms to try to detect forgeries?

A Yeah. So like by way of example, if a prescriber has never written prescriptions for oxycodone 30 milligrams before, in the past year, and then all of a sudden we see new prescriptions being dispensed for that particular provider, say if we have five prescriptions in the next month, it will flag on the algorithm.

On the back end, our call center will help by calling the doctor to validate if that truly is a forgery. If it is confirmed as a forgery, we then put all those alerts in place to be able to protect the patient prescriber.

Q When did this asking them --

MR. DELINSKY: I'm asking now, Mark. Sorry.

Q When did this forgery, when did you begin to unroll and implement the forgery program?

A And again, this has been an evolution in these different parameters. I think the prescriber alert was first. And to the best of my recollection, '17, '16, somewhere in there, we had to build the patient-level alert, so that came shortly after that. And then the realtime alerts based on the analytics for certain subsets of our algorithm I believe was 2020.

Q Okay. So this is one of those programs that was put in place pretty recently, and the company's continued to try to improve and evolve them?

A Correct.

Q Okay. Again, was this a program that you could buy from a tech vendor or something?

A No. We continue to innovate to be able to identify different ways that we can get to forgeries.

Q Okay. All right. Let's move on from alerts.

What's NarxCare?

A NarxCare is a branded product from Appriss that helps create visuals associated with the prescription monitoring program.

Q Does CVS have NarxCare in Ohio?

A Yes.

Q Okay. I think you just said this.

Does NarxCare work in the OARRS data?

A It does. It uses OARRS data to be able to create the visuals that they use.

Q Okay. In order to have this program and these visuals, did the State of Ohio have to approve NarxCare?

A They approved the relationship with Appriss, whether it's through Gateway or NarxCare, yes.

Q Okay. Could CVS implement NarxCare in Ohio without State of Ohio's approval of the program?

A No, no. And just for reference, like Appriss and NarxCare or Gateway isn't necessarily available in every state across the country. There's another vendor. And some states even today don't allow integration.

Q Okay. And why does it have to be approved by the State of Ohio?

A Because they need access to the PMP information. And depending on the regulations within that state, I don't know what's permissible or necessarily why those relationships need to happen.

Q NarxCare is running off the OARRS data?

A Correct.

Q Not just CVS data?

A Correct.

Q Yeah, okay.

MR. LANIER: Do we have a date?

MR. DELINSKY: I'm getting there.

Q When did Ohio, to the best of your memory, approve NarxCare for use in Ohio?

A I'm not sure of the exact date on NarxCare. I believe that there were discussions with Appriss on Gateway earlier.

Q Let's just focus on NarxCare if you can.

A Yeah, NarxCare, I'm not sure of when Ohio approved it. I know when we implemented it.

Q When did we implement it -- when did CVS implement it?

A We implemented it in 2018.

Q To the best of your understanding, was CVS one of the first pharmacies in the state of Ohio to implement it?

A It was one of the first, I believe, in the integrated fashion.

Q Okay. Did the State of Ohio approve NarxCare long before 2018, shortly before, or do you have no idea?

A I don't know the date for the NarxCare portion.

Q Okay. Now, let's talk about how, like, what NarxCare does.

Does it produce a score?

A It does. It gives a risk score, actually three risk scores. A narcotic risk score, a sedative risk score, and a stimulant risk score.

Through the process by which we built integration --

and I'm going to explain integration. I hope you don't mind, Mr. Delinsky -- but integration actually takes some of the work out of accessing the PMP. So when a pharmacist is typing in the prescription, we do a first call out to the PMP with the patient-related information.

So what it does is it pulls the report, and it sits it in the background, so that way when the pharmacist is in the verification screen, it's really quick to be able to access the information.

But what it also does is it pulls in those risk scores, so that way our pharmacists can see it on the verification screen. So when you're verifying, you have your cumulative MME and your three risk scores when you're doing a prescription in Ohio.

Q The risk scores, are those generated from CVS data or all the OARRS data?

A From the OARRS data.

Q Okay. And am I hearing you right that these risk scores that are generated from all the OARRS data starting in 2018 appear for every controlled substance prescription on CVS's screen?

A That is correct.

Q Okay. I'm showing you what has been marked as CVS-MDL-1727.

Ms. Harrington, do you recognize this document?

A This is an example of a job aid that we had talked about earlier. It's a visualization to be able to help our pharmacists understand NarxCare.

Q Okay. And I'd like to go down to the risk score -- the section on the risk score range report.

Do you see that?

A I see that.

Q Okay. So it looks like it's broken into three categories. Less than 300, is that a score?

A That's a score.

Q That NarxCare generates?

A Correct.

Q From the OARRS data?

A Correct.

Q And if it's less than 300, what does that mean?

A It means to be confident. They should feel confident with filling that prescription.

Q And is CVS affixing "be confident" to that, or does that come from NarxCare itself?

A That was Appriss's language.

Q And Appriss is the company that made NarxCare, correct?

A Correct.

Q Okay. 300 to 500, what does that score mean under this system?

A Be curious.

Q Okay. Greater than 500, what does that mean?

A Be cautious.

Q Okay. And it's these kinds of scores that are now appearing in the CVS computer systems for the use of the pharmacists?

A Yes.

Q Okay. Ms. Harrington, I'm now showing you -- I just need a sticky. Bear with me for a moment.

I'm now showing you CVS-MDL-1728.

Do you see this?

A Yes.

Q Do you recognize this document?

A Yes.

Q Did this document -- did CVS send this document out to its pharmacies to accompany the job aid we just looked at in 1727?

A Yes, to the best of my knowledge.

Q Okay. I'd like you to go down to the middle of the page, okay?

See where it says "score less than 200"?

A Yes.

Q Is that -- what was the language that was used in the document? Is it --

A Be confident.

Q Be confident.

So this is be confident.

Score above 500, what's that?

A Be cautious.

Q That's be cautious.

And by the way, I think we can see up top here, you see how the maximum score is 999? Do I have that right?

A That is correct.

Q So am I right that zero would be the safest. 999 is you've got to be the most cautious?

A Correct.

Q Okay. And then there's one, a score above 650. That's also be cautious, right?

A Correct.

Q A little higher than 500, but nowhere near still 9-9-9-9 [sic], right?

A Correct.

Q Okay. What I want to do -- and by the way, did CVS prepare this document even though it sent it to its pharmacists?

A This came directly from Appriss.

Q Okay. And here it says, "You can see in typical statewide population of patients" -- let's highlight this -- "the distribution of Narx scores" -- that's the scores we're talking about, right?

A Correct.

Q -- "on any given day is such that" -- and let's peel the percentages off -- "Appriss has determined" -- Appriss, who runs this program -- "that 75 percent of the time the NarxCare scores indicate be confident," right?

A Correct.

Q 5 percent of the time the NarxCare scores indicated be cautious?

A Correct.

Q Okay. Now, that's only 80 percent. The middle 20 percent is some combination of be confident and be curious?

MR. LANIER: Judge, does he lead through -- objection. Leading.

THE COURT: I'm going to sustain this.

BY MR. DELINSKY:

Q Okay. Now, Ms. Harrington, I want to highlight one other part of this program, and I want to ask you to explain it if you can.

"NarxCare score" -- "Narx scores that raise concern should trigger a discussion, not a decision."

Do you know what that means?

A Yes. This is -- it was one of our primary concerns with the product, is that we would have pharmacists making a knee-jerk reaction to a score and feeling like a score was an absolute decision of whether to fill or not to fill. And

we want our pharmacists to be actively thinking about the prescription and the patient and the prescriber and making sure that they're properly assessing it, rather than just saying if they were above a certain number, that means that that patient might not be able to get it.

Because when you think about some of the things that go into creating a score, the number of prescribers, the number of pharmacies, and the number of MMEs, you could have a cancer patient that's seeing multiple providers for appropriate care, and maybe they're going to the Cleveland Clinic to be able to get specialty care there, and seeing pharmacies there as well as in their hometown. And you wouldn't want a cancer patient just to be told no, they wouldn't be able to fill their prescriptions, because it had eclipsed a certain score.

We want our pharmacists to be using the knowledge that they have from their years in pharmacy school and their experience to be able to make an appropriate clinical decision.

Q Do you read this to say that 5 percent of the prescriptions should be refused?

A No. 5 percent -- above 5 percent is an area that pharmacists should be cautious and make sure that they're asking additional questions and digging deeper.

Q Are these NarxCare scores decisive or are they just

another piece of information?
A It's a tool that our pharmacists can use.
Q Okay. And it works with the alerts and --
MR. WEINBERGER: Your Honor --
THE COURT: Yeah, Mr. Delinsky, this is your witness. You can ask her the questions, but I want the answers to come from her.
Q Does it work with the other tools that we've already talked about that provide information to pharmacists?
A Yeah, all of these things work together to be able to support our pharmacists in their exercise of corresponding responsibility.
Q Okay. All right. Now, on top of tools that help pharmacists and supply information to pharmacists, take away scripts from pharmacists, does CVS operate any programs that sit on top of the pharmacies to try to make sure everything's going right?
A Yes.
Q Okay. You've referred to a store monitoring program.
Is CVS's store monitoring program one of those programs?
A It is. It is. We routinely review the dispensing that's occurring in all of our store locations.
Q How does that work?
A Again, we deploy an algorithm to be able to review

that dispensing. The algorithm, much like the prescriber algorithm, reviews six months worth of prior data. We run it quarterly to be able to detect stores that might have attributes associated with the prescriptions that we have additional questions on.

Q How often -- so you said quarterly. Does that mean the algorithm is run four times a year?

A Correct.

Q Is the algorithm run only through certain CVS stores or through all 10,000 CVS stores?

A All of them.

Q Four times a year?

A Correct.

Q When a store is identified by the algorithm and you have cautions, what happens?

A So we have folks that go to those store locations to be able to understand more about what's going on and making sure that they're asking those pharmacists that are in those buildings certain questions.

In the early years of the program we had our asset protection folks go, as well as our pharmacy supervisors go into those store locations. They had a questionnaire that they had various questions that they would ask. Those questions would concern patient behavior, doctors that they might be concerned about, and things like that, to help us

understand more about the dispensing that we were seeing out of that particular store location.

Q Then what happened after all this information was collected?

A It would depend on the information that's collected and the facts and circumstances surrounding that.

In some instances, there might be some education or some retraining that we would do with that particular store location. There might be doctors that are fed into the prescriber program and whether those doctors were suspended or not.

We'd go over refuse-to-fill conversations with them to be able to help them with that and understand any other special needs that they might have as a result.

Q Okay. From time to time, is there discipline? Does discipline of a pharmacist result?

A It can. It does.

Q When the algorithms flag a CVS pharmacy through this program, does that mean the pharmacy's bad?

A It doesn't mean that the pharmacy's bad. It means first that we need to understand more. And sometimes there are opportunities for us to be able to help a pharmacist enhance their thinking around corresponding responsibility, how do we help them get better, because it is an intellectual exercise. It's not a black and white exercise.

So there is an opportunity for us to be able to help them.

Q I believe you -- oh, wait. Mr. Lanier's going to have a question. When? Important question.

A When did the store monitoring program go into place?

Q Yes.

A I believe it started actually before I came onboard, but it was around 2012, to the best of my knowledge.

Q Okay. Is the store monitoring program another program like the prescriber monitoring program that CVS implemented after the *Holiday* events?

A Yes.

Q Did CVS acquire this program or did CVS build it?

A We built it.

Q Did any state, did DEA, did any regulator or law enforcement agency direct CVS to build these algorithms and to monitor its stores in this fashion?

A Not to my knowledge.

Q I believe you mentioned the Asset Protection team. I call it the Loss Prevention team.

Are they one and the same?

A They are.

Q Okay. Does CVS have a Loss Prevention program?

A We do.

Q Okay. Is the Loss Prevention program a program that also monitors the CVS pharmacists?

A Yes. They run different algorithms themselves to be able to try to detect different types of diversion. They look at growth of, you know, certain drug products, they look at drug product movement and movement within our inventory systems. They also do work within our store locations. They're often in our store locations as well.

Q Okay. You mentioned algorithm. Are there actually field personnel on the Loss Prevention team who are out and about looking -- exploring and reviewing the stores?

A Yeah. Much like our other field leaders, they have a defined geography that they oversee.

Q Okay. And about how many of those Loss Prevention field investigators, for lack of a better word, are there at CVS?

A I'm not a hundred percent sure of the exact number, but to the best of my knowledge, I believe it to be about 200-ish.

Q Okay. And now, much of what Loss Prevention is looking at is theft, right?

A Correct.

Q Okay. And that -- and theft is one element of diversion, correct?

A Correct.

Q Does Loss Prevention work with your group on dispensing issues if they identify questions in the course

of their reviews?

A Absolutely. We partner with Loss Prevention on a very regular basis on many different programs.

Q Okay. So even though their focus is on theft, am I right they're a partner with your group in identifying other kinds of potential issues, cautions, or flags?

A Correct. They're very good at behavioral interviewing, and so they're a perfect partner in this particular scenario.

Q And they conduct interviews in the pharmacies, is that what you said?

A Correct.

Q Yeah, okay. All right.

Does CVS have another program called MAQ?

A Yes.

Q What is MAQ?

A MAQ is short for Maximum Allowable Quantity, but what that means in lay terms is that it prevent -- it provides ordering guidelines for controlled substances and caps establish what we feel comfortable at CVS with our stores bringing in for controlled substance inventory.

Q Okay. I forgot to ask you a question, important question.

Loss Prevention, algorithms, interviews, field investigators. When -- my question is when was that put in

place at CVS? Maybe it was over time in different respects.

A Loss Prevention has been active since the day I was a pharmacist. I don't know all of their different roles. I know when I was a pharmacist working on the bench they would come in and do a regular health check. I saw them regularly.

They would also be looking at their inventory growth reports and asking different questions and counting different drugs on a fairly regular basis.

Q Okay. MAQ, Maximum Allowable Quantity.

Same question: When?

A So it was implemented across the country for oxy and hydro in 2014, to the best of my recollection.

Q Okay. And did I hear you right, that this -- the MAQ system would put caps on how much inventory could be ordered?

A Correct.

Q Were those caps, like, fixed across all 10,000 pharmacies or were they individualized to each pharmacy?

A It was individualized to each pharmacy. What we did using the Tukey method, which is an interquartile way to be able to detect outlier percentages, we have a percentage for each of the drugs that would be the highest percentage that we would feel comfortable with.

We would take that percentage and we would apply it to

that particular store's overall dispensing. And that would determine the amount of the particular drug product in question, like oxy or hydro, that we would feel comfortable going into that particular store location.

We also did have some hard caps that above a certain number we just weren't comfortable having that quantity filled.

Q How often were these caps recalibrated?

A Quarterly, I believe, in the early days. I think it's more regular now.

Q So at least four times a year?

A Correct.

Q And is this another space where algorithms were used?

A Yes. It was -- algorithms were used as a method of being able to apply those percentages to volume.

Q So what happens -- can you explain just as a practical matter what happens when a CVS store hits the maximum allowable quantity set by CVS?

A They don't get any more of that drug for that particular month.

Q And does CVS then take any --

MR. LANIER: Did she finish her answer?

THE COURT: Ma'am, did you finish your answer?

THE WITNESS: I did.

MR. LANIER: I didn't hear it. I'm sorry,

Judge.

THE COURT: And I think she says then CVS doesn't get any or doesn't take any.

THE WITNESS: Doesn't get any for that month.

BY MR. DELINSKY:

Q And then does CVS then do anything to inquire?

A Yes. So if it hits that limit, we use again our call center to be able to make outreaches to our store teams to be able to ask more questions around why that might have happened. Was it that someone was going on vacation and so they ordered a little bit more at the end of the month; or was there a reason, are they seeing more prescriptions from a new pain clinic that might have opened up down the street.

So we get that information, and then that information is used to be able to say, like, say, if they had a prescriber of concern, that information would then flow to the Prescriber program.

Q So these resources that we've just spent the morning going through, are any of them perfect in identifying prescriptions that were not written and are not being used for legitimate medical reasons?

A We keep trying to be perfect, but I can't tell you that they're perfect.

Q Okay. Do they work together?

A They do. Like, I've tried to illustrate through our

conversation different ways that the different programs talk to each other to be able to help strengthen each of the programs.

I think also, too, if something is missed in one program, we're looking for another program to be able to backstop anything that might be missed.

Q So is the idea that there are multiple layers of programs to work together in case -- to backstop one shortcoming in one program or in another?

A Yeah. We call them safety nets.

Q Okay. Has CVS explored creating additional alerts to help pharmacists identify red flags or possible signs of illegitimate prescriptions?

A We have a number of times.

Q Is CVS piloting a program now that might provide additional alerts?

A We are, but we still have some challenges even with that program that we're trying to build today, so we're working through those problems.

Q Okay. Given all the programs and alerts that CVS already has in place, why is it exploring new ones?

A Because we keep trying to get better.

Q The new alerts that CVS is prescribing, they would alert a pharmacist to red flags, correct?

A To select red flags is what we're piloting today.

Q Okay. And it would be cash -- well, what red flags --

THE COURT: Let's see what the witness knows, please.

Q What red flags, Ms. Harrington?

A The red flags are cash, age, and distance.

Q Okay. Would these new alerts for cash, age, distance, if CVS were to implement them, provide any information to the pharmacist that is not already contained in RxConnect?

A No. All that information is already contained within RxConnect. It just changes the visualization of it.

Q It changes the format of how it's presented?

A Yeah.

Q Okay.

MR. DELINSKY: Judge, it's 11:50. 10, 15 more minutes good?

THE COURT: That's fine.

MR. DELINSKY: Okay. Thank you.

Q Ms. Harrington, I want to create a timeline, okay? 2021 at the far end --

MR. DELINSKY: Is that too small? All right. Okay.

Q -- 2000 at the left end, left to right. Okay? And I want to put in some landmarks.

Do you recall when the *Holiday* case occurred? And I'm thinking about the revocation of the licenses, and stuff

like that.

A I think that was 2011.

Q Okay. I don't think Mr. Lanier's going to object to it. I think it was 2012.

MR. DELINSKY: You okay with that, Mr. Lanier?

MR. LANIER: Whatever you want to put on there. It's up to you. I'll fix it in cross.

MR. DELINSKY: All right.

Q All right. 2012, *Holiday*. Okay? I'm going to keep that there. And we all know, we've talked about that.

2000, CVS has in place --

A RxConnect. Central profile.

Q Okay. And then if we go to our list, some of the other stuff I think you said was there. The Loss Prevention program, was that back then?

A Yup.

Q Policies?

A Yes.

Q Field Supervision?

A Yes.

Q Now, let's go, fast-forward to 2012, okay?

You moved to corporate?

A Yes.

Q And I believe you testified that in and around that time the company put in some new programs as well.

A Correct. The Store Monitoring and Intervention program.

Q I'm sorry, what was the second one, Ms. Harrington?

A That was all one.

Q Oh, okay. Store Monitoring?

A Yeah.

Q Any others?

A Our Prescriber program.

Q DUR alerts, how far back did those go?

A All DUR alerts, I think that they were always -- I feel like they were always present, but I can't -- to the best of my recollection, when I was working as a pharmacist, I felt like I had DUR alerts.

Q Okay.

A Not specific Opioid Risk Module alerts that we later created, but general DUR alerts.

Q To be safe, let's not put them on, okay?

Let's just put some more dates on here.

We've heard some testimony in this case about the CDC guidelines on prescribing pain medication. Are you familiar with those?

A I am.

Q Okay. Do you recall when those came out?

A I believe that was 2016.

Q Okay. What did those pain guidelines do?

A Those pain guidelines were created for primary care doctors for prescribing pain medications. And it was to suggest that they should be cautious when prescribing the quantity and the strength of those particular prescriptions.

Q Was that the first time the Federal Government had ever come out with any guidance on how pain medication should be prescribed?

That may be too complex given --

A Yeah, I'm not sure I know the answer to the question.

Q Fair enough. Let's move past this.

Okay. Now, let's focus on this time period here, 2012 to 2021. And I'm looking at -- what are the programs that CVS began to develop and implement in that time period that we've talked about?

A So we have Maximum Allowable Quantity.

Q Mm-hmm. Yup.

A We have our Forgery Alerts --

Q Yup.

A -- which included both patient-level alerts and prescriber alerts.

Q Mm-hmm.

A We had the Opioid Risk Module, showing cumulative MME.

Q Mm-hmm.

A And Additional Guidance for Combinations.

Q Mm-hmm. NarxCare?

A NarxCare.

Q Okay. So back in 2000 -- well, we don't need to do that.

A question's been raised in this case that I just want to put to you plainly.

Why didn't the company -- you can see it on the timeline. You know, a lot of activity starts happening in 2012 and thereafter, okay? New programs in large numbers with great sophistication.

Why didn't CVS do that sooner? That's my question to you.

A Okay. We had things in place sooner, but we learned from the *Holiday* case. And we took that information to be able to use it to be able to create programs, to be able to try to make sure that it didn't happen again.

Q Did these programs, pick any one of them, that were put in place from 2012 forward, did they exist in the industry in 2012?

A They didn't.

Q Before or after 2012, had DEA ever provided any guidance indicating that pharmacies should use data analytics to try to identify or help identify illegitimate prescriptions?

A Not to my knowledge.

Q Before 2012 or after 2012, has DEA provided any

guidance indicating that pharmacies should install computer alerts to try to identify red flags?

A Not to my knowledge.

Q Are you familiar with the DEA Pharmacist's Manual?

A I am.

Q Are you familiar with the one that was issued in 2010?

A I am.

Q Do you know who signed it?

A I'm not sure.

Q Did the DEA Pharmacist's Manual direct pharmacies to use data and computers to try to identify illegitimate prescriptions?

A Not to my recollection.

Q Has any state Board of Pharmacy ever issued any guidance suggesting that pharmacies should use data analytics and computer alerts to try to identify these illegitimate prescriptions?

A Not to my knowledge.

Q Was there sort of a sea change in the whole industry in 2012?

A There was.

Q Okay. And again, these programs that CVS has implemented, did CVS build the vast majority of them on its own?

A The vast majority of them, yes.

Q Okay. From scratch?

A From scratch, with the exception of NarxCare and the Opioid Risk Module.

MR. DELINSKY: Your Honor, this is a convenient breaking time.

THE COURT: All right. Ladies and gentlemen, we'll take our usual lunch break. The usual admonitions apply. Have a good lunch. And we'll pick up at 1:00 with the balance of Ms. Harrington's testimony.

(A luncheon recess was taken at 12:01 p.m.)

A F T E R N O O N S E S S I O N

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(Jury present in open court at 1:06 p.m.)

THE COURT: Please be seated.

And Ms. Harrington, I just want to remind you you're still under oath from this morning.

THE WITNESS: Okay.

THE COURT: Mr. Delinsky, you may proceed.

MR. DELINSKY: Thank you, Your Honor.

Good afternoon everybody.

BY MR. DELINSKY:

Q You ready, Ms. Harrington?

A I am.

Can somebody close the back door though? The light from the outside is distracting. Thank you.

Q During trial, Ms. Harrington, we have heard about various warning signs a pharmacist should look for before filling a prescription.

Do you agree that pharmacists should look for these warning signs?

A Yes.

Q Could you identify a few?

A A couple of those warning signs may be a patient coming from a far distance and they live a far distance from the pharmacy, patients paying with cash when they have

insurance, directing the staff not to bill their insurance, certain combinations of medications at very high doses, are just a couple of examples, but the list is pretty extensive.

Q Does CVS policy require CVS pharmacists to look for these warning signs?

A Yes, our pharmacists must review controlled substance prescriptions to identify these potential warning signs.

Q Okay. Are they sometimes called, the warning signs, red flags?

A Yes.

Q Now, if you have one of these red flags, and let's take cash, a patient is paying in cash, is a cash payment always a red flag?

A No. There's plenty of reasons why a patient may pay cash and, you know, based on their prior history, that might not even raise a concern if they've historically used cash on all of their prescriptions for an extended period of time.

Q Okay. How about something like distance? Is that always a red flag?

A It depends on the facts and circumstances. I worked in Nashua, New Hampshire, but we had a lot of specialty hospitals in Boston, MGH and things like that. People fly out from all over the world to be able to go there. So I wouldn't have necessarily questioned if a patient was going

to see a specialist at MGH and then was bringing that prescription back to their home pharmacy to me to be able to fill it.

Q Who determines whether one of these warning signs that are often called red flags rises to the level of an actual red flag?

A It would be the individual pharmacist in the course of their evaluation of that prescription.

Q Okay. Do you know who Joe Rannazzisi is?

A I do.

Q Who is he?

A He was the prior -- I think his title had been acting administrator at the DEA. I'm not sure if that's right.

Q He was a DEA official?

A He was.

Q Did you ever attend any presentations that Mr. Rannazzisi gave?

A Yes. I attended a number of them across the country.

Q Okay. I'm showing you, Ms. Harrington, what already has been admitted as Plaintiffs' Exhibit 15962-A.

Ms. Harrington, have you seen either this presentation from Mr. Rannazzisi or similar ones before?

A I did go see a presentation in Virginia. I wasn't sure -- I'm not sure if Norfolk is that presentation, but -- I'm looking at it. The content looks similar to what I have

seen in terms of Mr. Rannazzisi's presentations.

Q Okay. If you could please turn to, if you look at the bottom right number, page 11. No, I'm sorry, Nicci -- Ms. Harrington. Let's start with page 10.

A I'm there.

Q Do you see that?

A I do.

Q And have you seen either this page or pages like it in presentations delivered by Mr. Rannazzisi?

A Yes, I have.

Q Okay. And this page lists some of the red flags -- or does this page list things that you see as warning signs or red flags?

A Yes, potentially.

Q It includes combinations, correct?

A Correct.

Q And I think early refills is another, correct?

A Correct.

Q Distance, is that on here?

A Yes.

Q Okay. And then if you turn to page 11, there are some more that are listed, correct?

A That is correct.

Q Okay. Do you see that Mr. Rannazzisi qualifies the word "red flag" with the word "potential"?

A I do.

Q Is that consistent with the presentations that you saw Mr. Rannazzisi give?

A Yes.

Q What's your understanding of why Mr. Rannazzisi calls these warning signs potential red flags?

MR. WEINBERGER: Objection.

THE COURT: Overruled the way it was asked. The witness can answer.

A I'm not sure that I can articulate Mr. Rannazzisi's --

THE COURT: No, the question was your understanding, ma'am.

MR. WEINBERGER: Of his state of mind, Your Honor.

MR. DELINSKY: I'll rephrase, Your Honor.

THE COURT: All right.

Q Ms. Harrington, what's your understanding of the -- they junked me up this time.

Why -- do you understand why the word "red flag" would be qualified with the word "potential"?

A Yeah, in -- it's to articulate when a pharmacist is presented with a prescription, there's a cognitive set of, like, activities that you go through in your mind really quickly as you're evaluating that prescription. And certain things just because of your knowledge of the patient, of the

prescriber, because of the therapy, it might not rise to the level of being a red flag because you already have knowledge to be able to answer questions about that in your head.

So "potential" I think is a quick shorthand way of kind of describing that work that happens in your mind cognitively on a prescription before you're filling it.

Q So CVS policies refer to red flags, correct?

A Yes.

Q Do they always use the word "potential"?

A Not always.

Q Do any CVS documents use the word "potential red flags"?

A There are some. It's interspersed. Sometimes it's "red flags," sometimes it's "potential red flags."

Q Okay. Is it consistent with CVS policy that whether a potential red flag rises to an actual red flag is subject to the pharmacist's judgment?

A Yes.

Q Okay. And could you go through with the jury again those things in a pharmacist's mind that may inform whether a potential red flag rises to an actual red flag?

A I mean, there's a lot of different things that go into that. One example, like I had said, was if a patient had been paying cash right along for their prescriptions and they were paying cash for their Lipitor and their

Lisinopril, and then they bring in a prescription for, you know, a short-term opioid for a dental prescription and they want to pay cash for it, that that wouldn't rise to the level of being a red flag because that patient's history was consistent with what they had done prior for their action in terms of payment.

Q As a pharmacist, did you get to know your patients?

A Yes.

Q And did you get to know the doctors and other medical providers in your community?

A Many of them, yes.

Q Okay. So was there information in your head that informed your decision in addition to sort of the data you saw on the computer screen?

A Yes.

Q Sort of the human information?

A Yes.

Q Okay. Does CVS call on its pharmacists in its policies to document the resolution of red flags?

A We do.

Q Okay. Is documentation, to your knowledge, required by law?

A Not to my knowledge.

Q If it's not required by law, why does CVS require it?

A It's good information to have at certain points in

time. We've looked it back at that information for different purposes.

Q If a pharmacist determines that a warning sign doesn't rise to the level of an actual red flag, does CVS policy require the pharmacist to document anything?

A No, we would require documentation for resolution of an actual red flag.

Q Okay. All right. A little more on red flags.

Does it ever happen when a pharmacist resolves a red flag but doesn't write down her work?

A Yes.

Q If a pharmacist does not document the resolution of a red flag, does that mean she didn't do the work to resolve it?

A Not necessarily.

Q In your experience, is it common for pharmacists to do the hard work of resolving a red flag but not to write down everything they did?

A Yes.

Q What is most important to you as a CVS leader that a pharmacist resolves a red flag in the best way possible or that the pharmacist writes down notes about what she or he did?

A The most important is actually kind of a twofold answer: That they identify the red flag and then they

resolve the red flag. That's the most important thing.

Q And are those two items of work more important than writing it down?

A Yes.

Q New topic: Pharmacist compensation.

We heard a little bit about that a while ago. I'd like to take you back to 2013, okay?

A Okay.

Q Since 2013, has CVS provided bonuses to its pharmacists based on the dispensing of controlled substances?

A No, we removed controlled substances from the incentives.

Q When did CVS remove controlled substances from all of its incentives?

A All controlled substances were removed in 2013, and C-IIs were removed in 2012.

Q So the transition began in 2012 and was completed in 2013?

A That is correct.

Q Okay. You were a pharmacist, you know, back in time when controlled substances were included in the bonus calculations, correct?

A Correct.

Q Was it a special controlled substances bonus or was it

mixed in with all the noncontrolled substances? If you know.

A I'm not exactly sure what it was based on. I would make a reasonable assumption that prescriptions was part of that compensation portion, but it would have been overall scripts-to-budget.

Q Including noncontrolled and controlled?

A That is true.

Q Okay. Were your bonuses large or small?

A They were small. And I don't remember exact dollar amounts, but I remember joking about the fact that one of the bonuses that I got in the early years we could only afford to take our team out for dinner with that.

Q Did these bonuses back in the day impact your dispensing in any way?

A No.

Q To your knowledge, did they impact the dispensing decisions of any other pharmacists whom you worked with?

A I'm not aware of that.

Q Okay. Did you even think about these bonuses when you were deciding whether or not to fill a controlled substance prescription?

A No.

Q Did any other pharmacists at CVS ever indicate to you that they thought about it?

A No one ever positively indicated to me that they had thought of it that way.

Q Okay. Ms. Harrington, you testified at the very start of our examination this morning about the community programs that your group, the Professional Practices group, operates.

Do you remember that?

A I do.

Q Okay. I think you identified two programs. Drug Take-Back was one, right?

A Yup.

Q Was the other Pharmacists Teach?

A Pharmacists Teach.

Q Okay. Let's take them in order.

Does CVS install in its store, in some of its stores, kiosks where patients can bring unused prescription drugs and dispose of them?

A Yes, we do.

Q Okay. When did that initiative begin?

A That initiative began when the DEA regulations changed to permit pharmacies to do that. And if I'm recalling the date, I think, to the best of my recollection, it was 2014-ish.

Q Okay. So let's just pause here for the jury.

Prior to that date -- and I understand that you have an imprecise -- you don't remember exactly. Let's just say

it's 2014 for purposes of the question.

Prior to that date, pharmacies, whether it was CVS, Walgreens, Walmart, or any other pharmacy, was not allowed to have a take-back kiosk, you know, in the pharmacy. Am I right about that?

A That is correct. But we actually helped our communities anyway by developing a program with -- in partnership with Partnership for Drug-Free Kids to be able to donate units to any police departments that were looking to have drug take-back.

Q So was that program to donate drug take-back boxes to police departments in place before CVS obtained the ability from DEA to put the kiosks in its own stores?

A Correct, because law enforcement was allowed to have those kiosks prior to the -- well, before we could.

Q Okay. Has CVS continued that program of donating take-back kiosks to law enforcement departments since it obtained the ability to include the kiosks in its own pharmacies?

A Yes. That program still runs today. We provide those boxes to any local PDs that want them.

Q Okay. Does CVS have a stash, for lack of a better word, of these take-back boxes that police departments can use?

A I have over 300, so if anybody knows of a local PD

that's looking for a take-back box, I would be more than willing to help them with that.

Q We're running sort of a surplus right now?

A Yes.

Q Why are take-back boxes important?

A It's important to be able to remove medications out of people's homes that they no longer need or want.

Q Why?

A Because those medications can -- other people can obtain those medications in that person's home and potentially misuse them.

Q Okay. And that would be a form of diversion?

A I would consider that a form of diversion.

Q Okay. Do you know if any CVSs in Lake or Trumbull County have take-back kiosks installed in them?

A They do. There's seven out of the 15 pharmacies, and we do have two police departments that have also taken advantage of our program.

Q Okay. Would you provide kiosks to any of the other police departments if they asked?

A I would.

Q Okay. Do you know the particular pharmacies in Lake and Trumbull County?

A I wrote them down, but I left it in the witness room.

Q Okay. But there's seven of them?

A There's seven of them.

Q In Lake and Trumbull County?

A Yes.

Q Oh, by the way. Those drug take-back kiosks, are those only for CVS customers or can anybody come in and drop stuff off there?

A Anybody can come and drop stuff off.

Q And is the manner and operation of those drug take-back kiosks heavily regulated by DEA?

A Yes.

Q Okay. They have to be very secure and stuff like that?

A Correct.

Q Okay. Pharmacists Teach, what is Pharmacists Teach?

A So Pharmacists Teach is where our pharmacists can go into local high school, middle schools, even elementary schools, to be able to deliver education on drug misuse. And we've been running this program since I think it started in 2013, to the best of my recollection. It's been a very successful program to be able to get our pharmacists out in the community.

We did have an evolution of the program. We parented with Discovery Education back in 2019, and we've built a digital suite of programs that teachers can actually download and use, as well as our pharmacists also

downloading that to be able to use, to be able to go into classrooms.

All of it is free to the schools, and so our partnership with Discovery Ed came at a great time because we never thought that there would be a pandemic and people wouldn't be allowed in classrooms or people would be doing remote learning. So there's been a lot of teachers that have been able to take advantage of that education and to be able to use it with their students.

We actually have three new modules coming out soon and we have three more I think coming out next year.

Q Is there a common misconception that young folks might have that Pharmacists Teach is designed to debunk?

A Yeah, in our first original session, you know, many young kids think because prescription medications are manufactured, prescribed by a doctor, that they are safer to use than street drugs. And really, the goal of the program was to make sure that they understood the dangers around prescription drug products.

Q Okay. Ms. Harrington, does CVS keep track of the amount of drugs, prescription drugs, that it has received, removed from the community in its take-back kiosks, and the number of hours it has devoted to Pharmacists Teach?

A So for our drug kiosks, I just want to correct one thing. It's not necessarily prescription drugs because

people can put nonprescription drugs, vitamins and things like that, in there too. But we've collected 3 million pounds of unwanted medication out of the communities.

And through our Pharmacists Teach program, we don't count the hours that our pharmacists devote to it, but we count the student lives that we've impacted. And we've currently to date impacted more than a million students across the country.

Q We're about to move into the most exciting and non-boring phase of your examination, Ms. Harrington. We're going to talk about policies. I'm going to try to do it as fast as possible, okay?

I believe you've already testified that CVS has policies to guide its pharmacists in the dispensing of controlled substances. Correct?

A That is correct.

Q Okay. Give me one minute.

Do you have a binder with you --

A Yes.

Q -- labeled CVS Dispensing Policies?

A Yes.

Q Okay. I want to give Mr. Hynes a sec to make sure opposing counsel has these, but we're going to start with Tab 1B in your binder, which is CVS-MDL-00266.

Ms. Harrington, do you see this exhibit?

A I do.

Q Okay. What is this exhibit?

A It's a dispensing guidelines. It's called the Protocol for Dispensing Narcotic Drugs for Pain Treatment.

Q Can you tell what year it's from?

A I believe that this is from 2012, but let me just check the history.

Yup, January 4 of 2012.

Q And is this sort of a follow-on to the guidelines that we looked at before from 2010?

A Correct.

Q And is this exhibit a true and accurate copy of CVS's Protocol for Dispensing Narcotics for Pain Treatment?

A Yes.

Q I'm going to put it up for the jury just so they get a sense of what it looks like.

And does this policy set forth a pharmacist's corresponding responsibility and how CVS expects its pharmacists to comply with them?

A Yes.

Q Okay. Let's just highlight a few points.

Do you see it says, "CVS Caremark expects and supports decisions by its pharmacists to not fill prescriptions if, in the sound exercise of their professional and clinical judgment, they believe or suspect that the prescription was

not issued for a legitimate medical purpose."

What does that mean?

A It means that CVS supports our pharmacists in their decisions, and we want them not to fill prescriptions if they don't believe it's for a legitimate reason.

Q Okay. And does this policy lay out some potential warning signs to look for?

A It does, under Section 2, those individual bullets, A through H.

Q And then if we go to the next page, the policy says, "Remember that you have the authority to decline to fill any prescription where, in the exercise of your professional and clinical judgment, you believe or suspect it was not issued for a legitimate medical reason."

Do you see that?

A I do.

Q Is that consistent with CVS policy?

A It is.

Q Okay. Ms. Harrington, I'm not going to walk through every successive iteration of that policy, but let me just show you a more recent version.

And I'm showing you what's been marked as CVS-MDL-00854.

A Yes.

Q Okay. What is 00854?

A This is another policy on dispensing controlled substances called the Guidelines for Dispensing Controlled Substances. This version is from July 2018.

Q Okay. So we have the 2010 one, the 2012 one, and the 2018 one?

A Correct.

Q And so just for the explanation to the jury, we can sort of go to the back, and there's this chart. What does that chart tell us on page 4?

A The chart shows a revision history and the date that it occurred.

Q Okay. So this policy has been in effect continuously?

A Yes.

Q Okay. With some changes here and there.

All right, Ms. Harrington, let me show you -- this next exhibit, Ms. Harrington, I believe in your binder it's Tab 2A.

A Okay.

Q Okay. And this is Plaintiffs' Exhibit 15601, P-15601.

Ms. Harrington, do you recognize this exhibit?

A I do. This is our Professional Practices Policy.

Q Okay. And can you tell from the document and from your memory how far back this policy dates?

A It initially began it looks like -- I'm reading at the top -- that it started in August of 1998.

Q Okay.

A But it looks like this version is from 2004.

Q Okay. And is this a true and accurate copy of one of CVS's policies at that point in time?

A Yes.

Q All right. I'd like to turn your attention to page 3, okay?

And do you see where it says, "Employees are expected to fill and refill only legal and authorized prescriptions"?

Do you see that language?

A I do.

Q "They are expected to uphold this legal and moral responsibility by keeping up to date on all state and federal changes in pharmacy jurisprudence."

A I do.

Q Is that consistent with CVS policy?

A It is.

Q And then on the next page there's a section on corresponding responsibility, correct?

A Yes.

Q Okay. Let's just focus on a few parts of this. It states that "The exercising of corresponding responsibility is especially important with regard to questionable prescriptions for controlled drugs."

Do you see that language?

A I do.
Q Is that consistent with CVS policy?
A Yes.
Q Now and today -- then and today?
A Yes.
Q It goes on to say, and I just want to spend a minute here, "However, corresponding responsibility does not include the right to refuse to fill prescriptions based on anything less than sound judgment."
Do you see that?
A I do.
Q "Blanket decisions based on a practitioner's prescribing habits or a customer's appearance are unprofessional and may be illegal."
Do you see that?
A I do.
Q "Each prescription must be analyzed individually to determine its merit and medical necessity."
Do you see that?
A I do.
Q Is this part of the 2004 policy about not allowing blanket decisions about particular doctors consistent with what CVS has done in more recent years?
A It is not. We allow blanket decisions, when stores feel that a prescriber's overall practice may be called into

question, to not fill any controlled substance prescriptions from that particular provider.

Q And how does your Prescriber Monitoring program fit into this as well?

A Yeah, our Prescriber Monitoring program is obviously a blanket rule that we can't fill for those particular providers.

Q Okay. So let's go -- let's stay though at this point in time, 2004. Were stores at that point in time still identifying doctors and saying, we don't want to fill for them anymore?

A I'm sure that it was occurring because -- just based on my time on the bench during the course of this time, I can't say exactly in 2004, I had some prescribers that we as a store team had decided not to fill for.

Q Okay. Could you look at 3A of your binder, Ms. Harrington.

A I'm there.

Q This is CVS-MDL-00945.

Ms. Harrington, do you recognize this document?

A I do. It's the Federal Guidelines For Controlled Substances.

Q Is it a true and accurate copy of those federal guidelines?

A It is.

Q Is this a CVS policy?

A It is.

Q Okay. If you could please turn to -- let's look at the bottom center, Bates number. That number is 0009, so it's page 9.

A Okay.

Q Does this have a section on corresponding responsibility?

A Yes, 14.1.

Q Does it direct pharmacists to perform corresponding responsibility?

A It does.

Q Okay. And then if you turn the page, does this policy then outline several patient red flags?

A Yes.

Q If you turn the page again, does it identify any other kinds of red flags?

A Prescriber red flags.

Q And is it just one or are there a number that are listed?

A There's multiples.

Q Okay. Last policy.

I'm showing you, Ms. Harrington, what's been marked as CVS-MDL-906.

Do you recognize this document?

A I do. It's an updated version of the prior document.
Q Is it a true and accurate copy of that document?
A It is.
Q It's CVS's policy titled Federal Regulations and CVS Pharmacy Guidelines for Controlled Substances?
A Correct.
Q Okay. And if we turn to page 13, does it have a corresponding responsibility section?
A It does.
Q And if we turn the page, is there a discussion of red flags?
A Yes.
Q If we turn the page again, is there additional discussion of red flags?
A Yes.
Q Okay. Thank you.

Now, Ms. Harrington, before I sit down and pass the witness, one more. You talked about training.

Do you remember that?

A I did. I do.
Q Okay. Do you see you have a binder that says CVS Dispensing Training Materials?
A Yes.
Q Okay. I forgot something. Before we get there.

CVS has many more policies that bear on trying to

identify illegitimate prescriptions, correct?

A Correct.

Q We just put in a small sample?

A Correct.

Q What are some of the other specific subjects that CVS has policies on in this space?

A Forgery, Loss Prevention, Filling of Schedule II Substances. There's a number of different policies.

Q Is there a specific policy on early fills?

A Yes.

Q Is there a specific policy on reviewing and accessing PDMPs?

A Yes.

Q Is there a specific policy on trying to identify forgeries or fraudulent prescriptions?

A Yes.

Q Okay. We won't take up time with those.

Now, training, same thing. I'm just going to show you a few.

I believe you testified that CVS is providing, apart from the one-on-one performance, the one-on-one individualized one, three times a year CVS pharmacists get training?

A Mm-hmm, yes.

Q Okay. Could you please look at Tab 1A.

A This is the DEA training that I referenced.

Q Okay. And is this from September 2012?

A Yes.

Q Okay. And is this a true and accurate copy of the training that was delivered in that time frame to CVS pharmacists?

A Yes.

Q Okay. Let's just very quickly -- if you can turn to page 21 of the training.

A I'm there.

Q Okay. Is there a section there on corresponding responsibility?

A Yes.

Q And if you turn to the next page, is there more discussing of -- discussion of corresponding responsibility?

A Yes.

Q Is there a list of potential red flags?

A Yes.

Q Okay. If you could look at Tab 1B of your binder.

I'm showing you what's been marked as CVS-MDL-1104.

Do you see this document?

A I do.

Q Is this another CVS training?

A Yes. This is the DEA training, but just an updated version from September of 2019.

Q Okay. Were there many additional trainings in between?

A Yes.

Q These are just samples?

A Yes.

Q Okay. Same sort of structure here. If you look at page 18, is there a discussion of CVS's policy on exercising corresponding responsibility?

A Yes.

Q If you turn to the next page.

Is there a list of potential red flags?

A Yes.

Q Is it an exhaustive list?

A No.

Q Can there be an exhaustive list?

A No.

Q Because you never know what the newest one looks like, right?

A Right.

Q Ms. Harrington, if you could look at Tab -- I believe it's Tab 2 of the same binder you're in, is this another training that was provided by CVS?

A Yes.

Q Okay. Do you recall when this training was provided?

A 2015.

Q Okay. And is this training exclusively devoted to corresponding responsibility in its entirety?

A It is.

Q Is this a true and accurate copy of this training?

A It is.

Q And again, this is just another sample of the many trainings CVS provided?

A Yes.

Q Ms. Harrington, you spoke about job aids.

Do you remember talking about job aids?

A I do.

Q Those are -- can you explain to the jury again what a CVS job aid is?

A It's just a summary document that also has visuals to make it easy for pharmacists to understand information.

Q Okay. Ms. Harrington, I'm showing you, and I think it's the last tab -- second to last tab in your binder.

A Yes.

Q And this is CVS-MDL-0393 [sic].

Do you see that?

A Yes.

Q Is this a CVS job aid?

A It is.

Q Do you recognize it?

A I do.

Q Has this been sent out to CVS pharmacists?
A Yes.
Q More than once?
A Yes.
Q What's the purpose of this job aid?
A The purpose of this job aid was just to reinforce some of the red flag behavior.
Q Okay. It's another --
MR. DELINSKY: Oh, did I not read it into the record, Mark?
MR. LANIER: No.
MR. DELINSKY: CVS-MDL-01 -- oh, date.
Oh, Miss Harrington.
I thought you said Bates, Mark, Bates number.
Q Do you recall the date of this, Ms. Harrington? And you can ballpark it as best you can.
A Yeah. To the best of my recollection, I would place it in probably early 2013. I would say 2013, to the best of my recollection.
Q Okay. And this -- does this identify red flags?
A Yes. Sorry.
Q Okay. And can you explain the top upper left? Why is there a stop sign there?
A We want pharmacists to pause and take a moment and think about the prescription and the facts and circumstances

that they have in front of them, and this just was a guide to be able to help them do that.

Q Okay. And then if you look over to the far -- the top far right, looks like there's a three-part decision-making process.

Can you talk about that?

A Just our pharmacists should take a moment to identify any potential red flags that are present on the prescription. Then they need to apply their professional judgment and decision-making to the information that they have. And then the last part is just deciding on whether or not to fill that prescription based on the information that they have available to them.

Q Okay.

MR. DELINSKY: Ms. Harrington, I have no further questions at this time. I believe Mr. Lanier may, so I pass the witness to him.

THE COURT: Okay. Before Mr. Lanier, any questions from either Walgreens or Walmart?

MR. STOFFELMAYR: No. Thank you, Your Honor.

MR. MAJORAS: No. Thank you, Your Honor.

THE COURT: Okay. So Mr. Lanier, you're up.

MR. LANIER: Thank you, Judge.

Your Honor, may it please the Court.

Ladies and gentlemen; Ms. Harrington; Counsel.

- - - - -

CROSS-EXAMINATION

BY MR. LANIER:

Q Ms. Harrington, I hope to take about an hour and a half with you max. We're going to try and move through this fairly rapidly. I've tried to reorganize all of your stuff so that we can cover it. Okay?

A Okay.

Q I am remiss if I don't thank you and thank the people at CVS for making a lot of good changes since we filed this lawsuit that make our community safer. So I do want to say thank you for that. All right?

A Those changes came I think before the filing of the lawsuit, but --

Q Well, a lot of them came after, but we'll fuss about dates in a little bit. But I do appreciate the fact that you've done it. I think it makes our community safer, don't you?

A I think that there's actions that we've taken to support our community, yes.

Q Ma'am, I'm going to ask you leading questions just like Mr. Delinsky, and I'm hoping you'll be able to give me quick answers as well. Okay?

A There's some laughter in the peanut gallery.

Q Yeah. That's not right, and I apologize for that.

Ma'am, I'm going to ask you leading questions, too, to try to keep the answers brief, okay?

A Okay.

Q So I'll reask that question.

The actions you've taken help make our community safer, don't you think?

A The actions that we've taken, like drug disposals to take drugs out of the community, have made our community safer, yes.

Q And the ones about dispensing practices and training your pharmacists, and things like that, don't you think those have helped make the community safer?

A I don't know that they've made the community safer. They've helped our pharmacists in how they comply with the law.

Q So your concern for that isn't as much the community as much as it is getting in trouble with the law?

A That's not what I stated.

Q All right. Ma'am, do you remember your tenth grade geometry teacher?

A I don't remember my tenth grade geometry teacher.

Q Mine was Ms. Bode, and I got an F on a grade one time because I didn't do my homework, and I didn't handle it the way I was supposed to.

You probably never got an F on anything in your life,

did you?

A There may have been an organic chemistry test in question.

Q Well, I changed my ways after that, and I decided I'd study real hard and try to make good enough grades to go to college, good enough grades to go to law school. But I can do all the things in the world after that, in the years to come; it's not going to change the F I got in Ms. Bode's class, is it?

A No.

Q And you understand the allegory I'm making here about the actions that have been taken by CVS and whether or not they fix harms that happened well over a decade ago.

You understand that?

A I understand what you're trying to intimate there.

Q Well, and I'm trying to intimate that in part because I look at the -- I tried to reproduce Mr. --

THE COURT: Delinsky's.

MR. LANIER: Yeah, it was Mr. Delinsky, Judge. And in my brain I wasn't coming out with it right, and I appreciate that help.

Q Mr. Delinsky's notes, I tried to reproduce them as best as I could. But these notes cover well over a decade, perhaps two decades of CVS policies and actions, correct?

A Yes.

Q And if we're to look -- let's go just to part of our story and go pre-2015.

Won't you admit to the jury that pre-2015, you were naive to believe that CVS was doing everything it could to reduce the growth of the tragic opioid problem in the United States; true?

A False.

Q Ma'am, I'm going to hand you Plaintiffs' Exhibit 459. And I'm sure you'll remember this because it is a PowerPoint that I quizzed you about when I took your deposition.

You remember my taking your depo, right?

A I remember it well, sir.

Q And this is a PowerPoint that goes to you February 19, 2015.

Do you see that?

A I see that.

Q And if we look and the jury looks at the first page of that PowerPoint, they're going to see that this is a PowerPoint where "Our Communities, Our Responsibility," you Nicci Harrington are on the front, top line.

Do you see that?

A I do.

Q And then if you look at slide that ends with page number 09, in 2015 y'all were talking about how your communities and responsibility, that drugs are killing more

than cars, guns, and falling.

52 million people over the age of 12 have used prescription drugs nonmedically.

Do you see that?

A Yes. These were graphics that we took to be able to illustrate the problem.

Q Is that a "yes" answer?

Thank you, ma'am.

And if you look at the notes on the next page that go -- the speaker's notes with this, do you see those?

A I do.

Q Do you see where it says, "When I started to really understand the tremendous growth of the misuse of prescription drugs, I realized I might have been naive -- I may have been naive to believe we were doing everything we could to reduce the growth of this tragic problem in the United States."

Did I read that correctly?

A You did. But as we talked before --

Q Ma'am, please just answer my questions. He'll have a chance to come back and finish it.

MR. DELINSKY: Your Honor, I object.

THE COURT: Overruled. Overruled.

Q Ma'am, so I go back to my question.

That's pretty much -- the language I ask tracks fairly

closely the language in this note; wouldn't you agree?

A False, because you articulate that "CVS" in your statement and the "we" that is referenced in the below, and I didn't write these speaking notes, but we've talked about this before. I believe the "we" was the collective "we," that is the community, which is more than pharmacies.

Q Ma'am, you were making this presentation to pharmacists -- or to CVS, not to the community, weren't you?

A I don't know who this presentation was to in 2015.

Q You don't recall who you made this presentation to?

Do you think you were making it to the community when on page 10 you talked about things of the protocol, "We expect and anticipate that our pharmacists will turn away."

Do you see that?

A What page are we on, please? You're going too fast.

Q I'm on page 10 of the speaker notes.

Do you see where it says, "We expect and anticipate that our pharmacists will turn away"?

Do you see that, ma'am?

A I'm just turning to the page, sir.

I do see that.

Q Okay. So you want "we" and "our" to mean the communities, or you think maybe that's CVS?

A In this particular instance, I believe that this refers to CVS, but in the prior page I believe it refers to

a broader "we."

Q Hmm. Now, I've got a road map for what I'd like to cover with you, please. And the road map's going to cover some of your CVS tools, but we're going to do it in a little different order than you did it with Mr. Delinsky. Okay?

Here's your road map. The jury's heard testimony about three phases of the opioid epidemic.

Are you familiar with those phases?

MR. DELINSKY: Objection, Your Honor.

A I haven't heard it --

THE COURT: Overruled.

A Sorry.

I haven't heard it referred to as phases like this, but --

Q Okay.

A -- I'm sure you'll explain it to me.

Q Well, we'll use the testimony that's already been in front of the jury on these different phases. And what I'd like to do is make each phase a stop. So we'll look at phase I, we'll look at phase II, and we'll look at phase 3. You can see the years there as well.

Are you tracking with me?

A I am.

Q Great. Now, in this regard, let's start with what the CVS policies were prior to phase II and phase 3. Let's go

back to phase I and before, okay?

A Okay.

Q Mr. Delinsky did a timeline for everyone, and I've tried to reproduce it as best as I could.

You see that?

A I do.

Q Now, that's not a full timeline, won't you agree?

A It is not.

Q In fact, we can go backwards in time, because while Mr. Delinsky talked about *Holiday* being a signal, important case where your company started changing what they did, *Holiday*'s not the first case to talk about what pharmacists and their companies must and must not do; true?

A True.

Q And so let's go back in time.

When did your company first start making money by selling opiates?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

A I don't know the answer to that question.

Q Well, when did you start working there as a pharmacist?

A 1994.

Q And were they already selling opiates?

A Yes.

Q Do you know if they were selling them in the '80s?

A I don't know when the CVS stores, like when we started CVS stores, I don't know the year.

Q All right. We'll put an "Unknown start date for selling opiates." Fair?

A Fair.

Q Now, you didn't tell the jury about the 1979 case of *Hayes*, did you?

A I'm not familiar with the *Hayes* case.

Q So when you took this class in school that you talked about, you never learned about the case of *Hayes* in 1979 that said if you're getting multiple prescriptions, it can be a problem; that said if you get them in the same month, that can be a problem? That's news to you?

A Those principles are not news to me, but I'm not familiar with that particular lawsuit.

MR. DELINSKY: Could we get a citation, please?

MR. LANIER: It's in the stakeholders brief.

Q The *Hayes* case in 1979.

How about *Bertolino* in 1989? Did anybody teach you about that?

A I don't recall, but I'm not sure if the principles from the case were incorporated into my education.

Q Those principles that were being espoused in the law

included using common sense, looking at the volume of prescriptions, ambiguities involved, a pattern of prescribing, and dosage, 1989.

Did you know those concerns were already out there?

A Those are things that I would have been looking for in my practice when I began my practice as a pharmacist.

Q *Liberty* in 1989, another case that was decided, did you know about that one? If it helps, I'll tell you they said look at dispensing patterns and same-day purchases.

Did you know about that?

A I can't recall that case.

Q In 2008, the *Medicine Shoppe* case, four years before *Holiday*, Medicine Shoppe's a chain pharmacy, isn't it?

A It's a franchise pharmacy.

Q And that's one where it talked about the problems associated with doctor shopping, prescriptions being written outside of one's practice area.

Did you know about that case?

A I did not.

Q And that's while you were practicing as a pharmacist for the company, true?

A That is correct.

Q And then in 2010, the *East Main* case. That's the case that talked about cash payments being a matter of concern, the conduct of the patient, the patient grouping, cocktails,

and prescribing patterns.

Did you know about the *East Main* case?

A I did.

Q Okay. So to say that all of a sudden *Holiday* was a page-turner, in truth, during phase I and before there had been a number of cases that dealt with the problems of prescribing under the corresponding responsibility law, true?

A I don't know those cases. I haven't reviewed them. I'm going to trust that what you're telling me is accurate.

Q I thought you said you did know the *East Main* case.

A The *East Main* case I do know.

Q All right. So you know at least one. And the others, just something that you've never been taught or learned, fair?

A Fair.

Q Now, during this 2000 to 2009 phase, have you had a chance to look at how many pills of oxycodone and hydrocodone your CVS stores were putting out in Lake and Trumbull Counties?

MR. DELINSKY: Objection, Your Honor. Pharmacies don't put out pills. They're prescriptions.

Q Dispensing. Excuse me. Dispensing.

A I have not had that information.

Q Okay. Well, the jury has already seen, and it's in

evidence, Plaintiffs' 26319-A. I'll put a copy up to you, but I can show you pretty quick that on page 2 that it gives the dispensing from the CVS stores in Lake and Trumbull by year.

Do you see that?

A Yes, I see the combination of Lake and Trumbull, and then Lake and Trumbull separated out.

Q And if we look at 2000 to 2009, that time period -- let me zoom in on it a little bit -- will you trust my math that the number of pills put out by the company during that time period -- or not -- dispensed, sold by the company during that time period, is something on the order of 10,358,157 pills in Lake and Trumbull County?

Do you see that?

A I see that. I'm not -- I haven't spent enough time with these numbers to be able to ground myself in them, but --

Q Okay. Well, my point is, ma'am, when we talk about this stuff, these are actual pills that have been put out in the county through CVS stores, but there is also --

MR. DELINSKY: Objection, Your Honor.

THE COURT: Let's use the word "dispense."

MR. LANIER: Dispense. I'm sorry, Judge.

Q These are actual pills dispensed through the CVS stores. And the jury has also seen the death rate from

overdose that starts in, in Lake and Trumbull County, and goes back into this 2000 range with the timing starting, for this chart at 2004. And we've got a phase I.

Do you see that?

A I see that.

Q So if we're going to look and see whether or not CVS played a significant role in this problem back then, wouldn't you agree that what CVS did in 2020 isn't going to be relevant?

A Actions that CVS takes in 2020 are not impactful to things that happened in 2000, no. That doesn't make sense.

Q So, for example, if we wanted to see what Dr. Frank Veres was prescribing that was being dispensed by your stores in these years of phase I, we could go and look up those prescription numbers, couldn't we?

A We could.

Q Do you have the prescription numbers for Dr. Veres? Have you looked at them?

A Not for that time period.

Q Over 900 prescriptions. That's not pills now. There's a difference between prescriptions and pills, right?

A Mm-hmm. So that was over 900 prescriptions over that nine-year period?

MR. DELINSKY: Objection, Your Honor.

MR. LANIER: Excuse me. I'm wrong. I'm

wrong, I'm wrong, Judge. I'm wrong.

MR. DELINSKY: You know, objection, Your Honor. Could we go on the headset?

(At side bar at 2:09 p.m.)

MR. DELINSKY: Your Honor, the concern is that Mr. Lanier is just throwing numbers produced by data consultants up to the witness, and she has no knowledge of them.

THE COURT: I'm a little concerned about this too. I mean, you can --

MR. DELINSKY: What I had said, Mark, was that my concern is that you're throwing up data, information computed by data analysts that she has no personal knowledge of. And this evidence isn't in the case. These computations aren't independently in the case.

THE COURT: Well, I think there was testimony about these. It's in the case. But she doesn't know anything about it, so I -- you can say, "Assume that, what do you have to say about it," but --

MR. LANIER: All right. I'll do it that way.

THE COURT: All right.

(In open court at 2:10 p.m.)

BY MR. LANIER:

Q Ma'am, I need to change my numbers.

Assume with me that it's over 1300 prescriptions that

were filled just for Dr. Veres in these counties during phase I.

Would that shock or surprise you?

A I don't know that I have an opinion either way because I don't know the details on Dr. Veres' dispensing. It's 1300 prescriptions over the course of nine years, and I don't have a calculator. So 1300 prescriptions over the course of, say, 10 years, 130 prescriptions per year.

I don't know what to think without knowing the details of the prescriptions. It's hard for me to comment on that.

Q And so that our record's clear, I only have your dispensing numbers from 2006 on, so this is actually over four years, not nine. Okay?

A It's very difficult for me to comment on this without the detailed information.

Q Well, we'll look at some of those details later, because years later, you get involved with Dr. Veres, don't you?

A We did.

Q So within the framework of this, I want to know what were the programs in place to stop this epidemic or at least any role from CVS in the epidemic back in 2000 to 2009. Okay?

A We --

Q Are you tracking with me?

MR. DELINSKY: Object to form. Objection, Your Honor.

THE COURT: Overruled.

Q Are you tracking with me?

A I am.

Q You said that y'all had RxConnect, right?

A Correct.

Q Now, RxConnect is collecting data on each patient, isn't it?

A It's collecting information on the prescriptions that are filled for that particular patient.

Q And it's collecting that data to sell it to IMS --

MR. DELINSKY: Objection, Your Honor.

MR. LANIER: I'm asking.

Q Right?

THE COURT: All right. You can ask the question.

A I don't know about the relationship with IMS and when that started.

Q You do know about it though now because you've been involved with IQVIA, haven't you?

A We use IMS data that we buy from them now.

Q But did you not know y'all used to sell this data to --

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

Q Did you not know y'all used to sell this data to IMS?

A I don't know that firsthand. I have heard from another just on a brief conversation that there's a relationship between IMS and CVS.

Q Okay. But what you heard, I'm assuming you heard it from people within the company, right?

A Yes.

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

Q And so what you heard was that your company was selling the data on the patients to IMS, right?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Well, I'll sustain that.

Q Ma'am, did you hear that your company was selling --

THE COURT: I'll sustain that the way it's asked.

MR. LANIER: Okay.

Q Did someone within the company affirm to you that they were -- that CVS was selling patient data?

MR. DELINSKY: Objection.

MR. LANIER: Your Honor, if it's company, it's a corporate admission. It won't be hearsay.

THE COURT: Sustained.

Q Okay. The other aspect -- so you've never seen the

IMS contracts?

A No, not to my knowledge.

Q Would it concern you as someone in your job if you were to find out that the company was selling data that would be used --

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

Q -- that would be used in marketing to other -- to manufacturers?

A I have never heard that before.

Q Wasn't my question.

Ma'am, would it concern you in your job, what you do now, if you found out that your company was selling prescription data to IMS --

A Yeah.

Q -- which would then sell it to Purdue and others back in the day for marketing to doctors? Would that concern you?

MR. DELINSKY: Objection, Judge. Lack of foundation in about a hundred different ways.

THE COURT: Overruled.

A I just don't understand how that information would be used. My understanding is IMS just has aggregate information like blinded information. I don't understand how that would be used.

Q Okay. So assume with me that your company was actually giving ZIP codes of the doctors, ZIP codes of the patients, and the prescribing habits of the doctors, and selling that to IMS.

If that were happening, would it concern you?

MR. DELINSKY: Same objection.

THE COURT: Overruled.

A I don't know. I --

Q Okay. Next question then.

The other thing that I understand from Mr. -- I'll put "don't know" here.

The other thing that I understand from Mr. Delinsky y'all had in phase I was the DUR alert, right?

A That is correct.

Q But let's be real clear about that. That would do drug-drug interaction, by and large, right?

A That's one of the modules, yeah.

Q And that module would take it out of what you would call the PDR, the "Physicians' Desk Reference" back then, right?

A That is correct.

Q So it would not cover things like the trinity cocktail dealing with opioids. That wasn't coming out in the DUR in 2000, was it?

A I honestly am not sure, because there is increased

sedation with those products together, so it is possible that those two medication -- two, three medications would have caused a DUR alert to trigger.

Q Ma'am, even as of 2017, y'all didn't have an alert for the trinity cocktail in place, did you?

A Not specifically to the trinity with the directions that we provide on how pharmacists handle it.

Q Yeah. In other words, in 2017, y'all were still saying that you need to improve documentation in RxConnect for cocktail fills, didn't you?

Do you have Plaintiffs' 8415 in front of you?

A I do.

Q It's the three-year road map in 2017.

Do you see that?

Do you see that, ma'am?

A I do. I'm just trying to familiarize myself with this document because I'm not on the e-mail string, and I've not seen this.

Q All I'm asking you, ma'am, is if you'll go to page 29 of the PowerPoint, where you see 2018 to 2020 proposed projects?

MR. DELINSKY: Objection, foundation. Foundation, Your Honor.

A What was the page again, sir?

THE COURT: Overruled.

Q It's page 29, ma'am, of the PowerPoint. You'll see in the lower right-hand corner CVS Health 29.

These are your projects for 2018 to 2020.

A If you can just give me a moment to read the objectives, please.

Q Well, ma'am -- okay. I want to read them out loud so we can read them together, okay?

A Okay.

Q The project name is Holy Trinity Alert.

Do you see that?

A I do.

Q And the target deployment is first quarter 2019.

Do you see that?

A I do.

Q And the objective, major bullet point, is "Realtime identification of controlled substance cocktail fill."

Do you see that?

A I do.

Q And the projected sources of value, it starts out with "Improve documentation in RxConnect for cocktail fills," correct?

A Correct.

Q Fourth bullet point, "Improve patient safety."

You see that?

A I see that.

Q "It will reduce damage to CVS branding."

Do you see that?

A I see that what was written here.

Q And so the idea that this DUR alert in 2000 was alerting all of your pharmacists of the Holy Trinity, that's not a fair thing to be saying under oath, is it?

A I'm not sure exactly how the alert fired then. Like I had said before, to the best of my knowledge, there was a drug-drug interaction because of the increased sedation from the drugs, and it would have fired.

It wouldn't have fired with the specific language around the combination of the three drugs together. And the enhancement that this brought was it provided additional direction on actions for our pharmacists to take to be able to support the patient in those particular situations.

Q Ma'am, I just asked you if it's fair to say that the DUR alert doesn't seem to be working for the Holy Trinity because y'all have got a whole project on it just in the last couple of years trying to get the alert in place, right?

A I am not sure how effective the DUR alert was during that time frame because I wasn't overseeing it at that point in time. The project here was just to reshape the visualization for our pharmacists and provide additional direction to them.

Q Well, at least we can affirm together that the 2018 to 2020 proposed project does not say "Tell them to look at the DUR," right?

A I'm sorry, what was the question there?

Q Yeah. Can't we agree that the 2018 to '20 project on the Holy Trinity alert does not say "Just tell them to look at the DUR," does it?

A No, it doesn't say that, but I wouldn't expect it to.

Q Now, if we continue to look at what you had in place in phase I, we've also got what Mr. Delinsky has put up here as Plaintiffs' Exhibit 15601, which is the Pharmacy Operations Manual; correct?

A Yes.

Q And Mr. Delinsky looked at that. But while it says "Employees are expected to fill and refill only legal and authorized prescriptions"...and keep up to date with the changes in the law.

You see that?

A I do.

Q Not even you were keeping up with the changes in the law, were you?

A How do you figure that?

Q Well, I asked you about a number of different cases, and you'd never heard of them. Remember?

A This was while I was in high school that those cases

happened.

Q *Medicine Shoppe*, 2008, were you in high school?

A I was not in high school then.

Q *Medicine Shoppe*, 2008, were you a pharmacist?

A I was.

Q Did you work for CVS?

A I did.

Q You hadn't heard of the case, had you?

A It was a case. It wasn't law.

Q "Keeping up to date on all state and federal changes in pharmacy jurisprudence."

You understand jurisprudence includes cases, right?

A To be honest, as I sit here today, I'm not quite sure what jurisprudence includes.

Q All right. At least -- all right.

So if we try to find red flags in the manual in 2004, I'm not seeing it anywhere. Am I missing it?

A I'm not sure. I don't believe it was in policies in 2004.

Q You're not -- you don't believe it was in policies?

A No.

Q And how about if we look at Plaintiffs' Exhibit 23305, which was the policy and procedure that was revised as of September of '08 that Mr. Delinsky showed you which had this language in it, in 6.3.

Do you see that?

MR. DELINSKY: Objection. I don't think I showed the witness that, but I'm more than happy for Mr. Lanier to.

MR. LANIER: Okay. I'll be glad to show it to her.

Q Ma'am, this is another one that evidently you didn't cover yet.

Are you familiar with this?

A I am.

Q Again, it says, "All pharmacists must adhere to the following."

Doesn't give you the red flags, does it?

A It does not.

Q Now, as we continue through there, I want to ask you about a few more things.

But right now we're through with phase I, aren't we?

A If you're telling me we're through with phase I, we're through with phase I.

Q Well, I mean, we've got the general things that Mr. Delinsky said about you've got supervisors that are supervising the stores and things like that. I mean, they're supervising all the time. That's not particular to red flags back then, true?

A They had broad responsibilities, but making sure that

appropriate dispensing was occurring in our stores was part of their role and responsibility.

Q Okay. And we can see how well they did it by looking at some situations that happened in phase II, can't we?

You tracking with me?

A I am.

Q Phase II, I just want you to assume with me for purposes of this that the records indicate in Lake and Trumbull County, CVS dispensed 14,551,004 oxy and hydro doses in that four-year time period. Okay?

A Okay.

MR. DELINSKY: Objection, Your Honor, to the data.

MR. LANIER: I'm asking her to assume it, Judge.

THE COURT: Yeah, overruled.

Q Now, you say that the company started rolling out some things during this time period, right, phase II. Correct?

A Correct.

Q And this rollout is one that was happening, I think Mr. Delinsky had it up here, phase II, 2010 to 2013. That's going to include *East Main*, that's going to go up through the *Holiday* case, correct?

A Correct.

Q So this is phase II.

Now, you said that the validation system got rolled out during this time period. Remember that?

A Prescriber Validation?

Q Yes, ma'am.

A Yes.

Q And that's where y'all would confirm that the doctor had a license or something like that, right? A DEA number.

A It would validate -- and I think to the best of my knowledge, it would validate, you know, the registration, the Schedules that someone was able to prescribe, and things like that.

Q Yeah. And yet, your stores got in trouble for putting out prescriptions without validated DEA numbers, didn't they?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Yeah, sustained.

Q Well, ma'am, you know about the settlement agreement, Plaintiffs' Exhibit 10212, that your store entered into in 2015 coming out of Rhode Island, don't you?

A Yes.

Q And you know in that settlement agreement, which we'll mark as Plaintiffs' Exhibit 10212, you know in that settlement agreement that one of the problems the company was settling was this concern that they had been filling prescriptions with invalid prescriber DEA numbers, or under

circumstances where the pharmacist filling the prescription knew or had reason to know the prescription in question was invalid or unauthorized. Correct? Correct?

A Hang on one second. I'm just familiarizing myself to what --

Q I mean, ma'am, you're in your job at this point in time. This is part of what you do, isn't it?

MR. DELINSKY: Objection.

THE COURT: Hold it. Yeah, I'll sustain that. Let the witness finish reading the document. Then you can ask a question, Mr. Lanier.

MR. LANIER: All right.

Q Ma'am, the part I'm concerned with, if it helps you, page 3. It's got the three points.

A That's what I'm reading.

Q If it helps you recall, we talked about this in your deposition quite a bit.

A Okay. To my knowledge, I thought that this was a forgery case, and so I'm --

Q I'm sorry, I can't hear you. "I thought this was" what?

A I thought that this was a forgery case.

Q No, that's a different one, ma'am.

A Okay.

Q Do you see it?

A Yup.

Q And this is 2015 when this settlement agreement was entered into; is that right?

A Yes.

Q In fact, we can go on the timeline that you and Mr. Delinsky were putting together, and we can add not just the *Holiday* case, but in 2014 y'all settled a case with Texas -- or in Texas, arising out of Texas. Remember that?

A Yes.

Q In 2015 you had your Florida settlement, correct?

A Yes.

Q In 2015 you also had Rhode Island settlement that we're looking at now, right?

A Yes.

Q In 2016, you had a Massachusetts settlement, didn't you?

A Yes.

Q In 2016, you had a Maryland settlement, didn't you?

A Yes.

Q In 2019 you had another Rhode Island settlement, didn't you?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

A Yes.

Q And in terms of how the company reacted to these

settlements, I'd like to look at that in a little more detail. But the first one is what has been shown to you by Mr. Delinsky as Plaintiffs' Exhibit 20699. This was shown to you by Mr. Delinsky as some of the actions y'all were taking in 2010.

Do you see that?

A Yes.

Q And 2010 is at the start of phase II, isn't it?

A Yes.

Q And for the first time, in 2010 y'all start talking about red flags are warning signs and listing them. True?

A True.

Q Now, what you and Mr. Delinsky did not tell the jury is what had happened two days before this e-mail went out.

Do you recall?

A I wasn't in my role at that time, so I don't know.

Q Well, I know you weren't in your role at that time, but you have read the *Holiday* case very carefully, right?

A Yes.

Q You've been testifying about the *Holiday* case, haven't you?

A Yes.

Q And the *Holiday* case is marked Plaintiffs' Exhibit 42147-A.

You are familiar with the *Holiday* case, aren't you?

MR. DELINSKY: Objection, Your Honor. We've already discussed this exhibit, it shouldn't be displayed.

THE COURT: Well, overruled.

Q You are familiar with the *Holiday* case, aren't you?

A I am.

Q And you'll see on page 6 -- it's got page numbers up at the top -- 62324, it talks about a December 2010 meeting where the DEA investigators explained to CVS officials various red flags to look for, including a cocktail of oxycodone and alprazolam. The DI further testified that we brought up examples again of people coming in from the same doctors with the same prescriptions for oxy, 15, 30 milligrams, alprazolam 2 milligrams; a lot of people wanting to pay cash, a lot of people wanting to drive distances to the pharmacy or to the --

MR. DELINSKY: Objection, Your Honor.

THE COURT: Sustained.

Just ask a question.

MR. LANIER: Yes.

Q Ma'am, this meeting where these red flags were detailed happened two days before your company sent out that document Mr. Delinsky and you talked about. Did you know that?

A I didn't.

Q Did you know that two days before your company was

being taught -- or being explained, not taught --

MR. LANIER: Let me start that over, Your Honor.

Q Did you know two days before that investigators were explaining these various red flags?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

A I did not.

Q Did you know that the investigators also explained that calling a doctor to verify whether he wrote a prescription would not be sufficient to determine if they followed the law? Did you know that?

A I know that language, but I wasn't present at that discussion.

Q So the first red flags y'all sent out to your pharmacists you send out two days after this meeting in 2010. Fair?

A I'm not sure of the exact date. In *Holiday* it just says December of 2010, but --

Q And I'll represent to you from Joe Rannazzisi's affidavit that --

MR. DELINSKY: Objection, Your Honor.

THE COURT: Sustained.

MR. LANIER: I'll keep moving, Judge.

Q Ma'am, my question to you is, is there any reason

y'all couldn't have sent that e-mail out about red flags 10 years earlier?

A There wasn't a mechanical reason why we couldn't send an e-mail out about it earlier, but I don't know the reasons why. The e-mail was crafted at this date or on this time, and I'm assuming it's because we were -- we were learning more, and we wanted to share that information with our pharmacists at that time.

Q Ma'am, do you know if -- you're not making excuses for the company not understanding red flags or warning signs before, are you?

A I'm not. As a pharmacist, again, I had -- I think I've testified that as part of my pharmacy practice during that time I would be looking for things that would be considered warning signs.

Q Ma'am, but my question to you is, your company could have sent out that e-mail explaining the warning signs much earlier, couldn't it?

A Potentially.

Q I'm sorry?

A Potentially.

Q I mean, if they wanted to or if they knew enough to, right?

A Potentially.

Q And then in 2012 is when the decision finally is

coming out on *Holiday*, correct?

A Correct.

Q And that decision, as Mr. Delinsky said, was a big deal within the company, wasn't it?

A It was.

Q Got you your new job position, didn't it?

A Yes.

Q Because the store was going to -- the company was going to try and fix many of the problems that had been pointed out by that decision, fair?

MR. DELINSKY: Objection, Your Honor. Two pharmacies.

MR. LANIER: Oh, no.

THE COURT: Overruled.

Q Ma'am, you understand the company was involved in the *Holiday* case even beyond two pharmacists, right? Right?

A No, my understanding is that *Holiday* was around two stores in Florida.

Q But, ma'am, you understand that it was the company that was involved in the decisions, and it was company policies at issue, don't you?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

A My understanding is it was based on the dispensing from the pharmacists at those two locations.

Q Ma'am, in the decision itself on page 62323, "Vice president of Pharmacy Operations explained that CVS accepted responsibility on behalf of the respondents."

MR. DELINSKY: Your Honor, objection.

Look, it's clear from the document the respondents are the two pharmacies, and this is legalese being injected into --

THE COURT: I'll sustain that.

MR. LANIER: Okay.

Q Ma'am, there was a settlement agreement that grew out of this, wasn't there?

A Yes.

Q And the settlement agreement was with CVS, wasn't it?

A Yes.

Q So CVS in the settlement agreement in 2015 took responsibility and agreed to certain terms, didn't it?

A CVS agreed to certain terms in that settlement agreement.

Q And all of these changes came about after 2012 not because two pharmacists were renegade, but because the company needed to change its policies, right?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A No.

Q Meanwhile, during this same time period, let's talk

about what was happening in Lake and Trumbull Counties, because the statistics were arriving in some of the CVS stores there, weren't they?

A I'm not sure.

Q You didn't recall Store 4351 shows an increase in volume with Dr. Demangone, for example?

A I don't recall.

Q You don't recall whether or not the stores were showing problem signs from Dr. Veres and Dr. Torres?

A I don't recall.

Q Well, we'll get to more of that in a moment. But let me just get you to at least agree that during this phase II time, after *Holiday*, that's when your company started sending out documents like you and Mr. Delinsky talked about, DEA & Pharmacy Regulatory Training; true?

A Yes.

Q No reason you couldn't have sent that out in an earlier phase, is there?

A Yeah, I'm not sure of the content of the training that was prior to that.

Q "I'm not sure of the content of the training"?

When you answered Mr. Delinsky's questions about it, you don't know what the content was?

A No, no, no. Prior to the trainings that we talked about here, like the training that was -- pharmacists were

receiving in, say, 2000, I just -- I don't have copies of what that was, and I don't specifically remember for myself what the training that I would have done.

Q Yeah, we've not been handed -- in all of the documents produced, we've not been handed anything even remotely similar to that.

MR. DELINSKY: Objection, Your Honor.

Q Would you expect --

THE COURT: Overruled.

Q Let me ask it this way.

Do you really believe there was training like that that listed red flags back in phase I?

A I'm not sure of the content of what the training would have been there. I'm sure that the training would have reflected that pharmacists needed to comply with state and federal regulations.

Q Okay. But what those state and federal regulations were is the issue, isn't it?

A Well, I don't know what the state and federal regulations were is what the question.

Q Well, I mean, you were asked these questions by Mr. Delinsky about what are red flags and potential red flags.

A Correct.

Q Your company calls it a red flag, doesn't it?

A We call it red flag. We call it potential red flag. We call it warning signs. The language has varied in our documents.

Q And the *Holiday* case calls them red flags, doesn't it?

A I believe that it refers to it as red flags.

Q Doesn't say potential red flags, does it?

A No.

Q And you pointed out you don't know what Joe Rannazzisi meant, you can't read his mind when he said potential red flags for those slides, right?

A I can't speak to Joe Rannazzisi's state of mind.

Q Right, because if you look at the PowerPoint, you'll see he talks about how to resolve the red flags later. Do you remember that?

A I do remember him talking about it.

Q And do you perhaps remember, as the jury might, that his explanation of why he called it "potential" is because it's not an exhaustive list?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

Q Do you recall that?

A I don't recall that.

Q Okay.

MR. DELINSKY: Your Honor, we didn't show any testimony because of Your Honor's rules.

THE COURT: Overruled.

Q Next, Mr. Delinsky asked you, looking in this same phase and time period, about the company policy on documentation.

You understand that we've had an expert look at the actual prescriptions that y'all filled, 2,000, a sample size, during this time period, ten year time period.

Did you know that?

A I didn't know that.

Q And so a lot of the prescriptions didn't have any documentation on them.

Is it your testimony that the official company policy, you're swearing under oath here, let all the pharmacists know from headquarters, the policy is resolve red flags, don't worry about documenting it?

MR. DELINSKY: Objection, Your Honor.

Q Is that your policy?

A That is not our policy.

THE COURT: Overruled. She can answer the question.

Q Your policy is the exact opposite of that, isn't it?

A Our policy states that our pharmacists need to document it. But as I testified earlier, the important thing is that they're resolving red flags.

Q Well, you just said "Our policy states our pharmacists

need to document it."

That's not what the policy says. You were handed the policy by Mr. Delinsky. It's CVS-854.

See that?

A Yes.

Q If you look down on page 9, this is one he didn't read to you carefully, but he handed it to you. It says, "CVS pharmacists" -- does that say -- "need to document"?

A It says "are required."

Q -- "are required to document" how many of the steps taken to resolve red flags?

A "All steps."

Q And that's a requirement within the company, isn't it?

A It's required in our policy.

Q So this idea of, ah, just we'd rather you resolve the red flags than document it, that's not fair. What the company says is, resolve it and document it, right?

A That's what's in our policy.

Q I'm sorry?

A That's what's in our policy.

Q Yeah. And it's not just there. I can go through multiple incarnations of your policy, given time, and find it in them, couldn't I?

A Yes.

Q So now we get to documents like in this same time

period -- we are at time period II, phase II -- we get to documents about Dr. Torres and Dr. Veres.

And I'm handing you document 8406.

This is out of Warren, Ohio, in the counties we're concerned about.

Do you see that?

A I do.

Q And this is Dr. Torres and Dr. Veres. There's an issue that's arisen about their oxycodone and OxyContin scripts.

Do you see that that?

MR. DELINSKY: Objection. Foundation, Your Honor. Ms. Harrington is not in the document.

MR. LANIER: Well, she handled this investigation.

THE COURT: Why don't you ask her if she recognizes the document or knows anything about it first.

Q Ma'am, didn't you work on the investigation for this?

A Mine just has nonresponsive documents.

Q Sorry, I'm really having trouble hearing you.

A My form is blank.

Q That's just the second and third page and fourth page and fifth page and sixth page and seventh page; then it gets interesting after that.

MR. LANIER: No, she's got the right document.

When it was produced to us, those pages were blank.

MR. STOFFELMAYR: But they're not on the hard copy, Mark.

MR. LANIER: All right. I'm going to keep moving on in the interests of time, ma'am. I've got other documents that will work. That's fine.

Q Now, as a practical matter, in 2014 y'all became aware of the high volume of prescriptions.

In 2014 -- let me back up.

You testified that when a store or a doctor tripped y'all's numbers in this time period, that an alert would go out, and it would indicate that. Remember? And y'all would check in on the store. Right?

A Right. So in our Controlled Substance Monitoring program for our stores, we would evaluate their dispensing.

Q And Michelle Travassos was one of the people involved in that?

A Michelle Travassos led that work.

Q And Lisa Ciccolella?

A Maybe.

Q All right. Well, Michelle Travassos reports to you?

A Today she doesn't. She's a couple layers below me. I'm not sure if she was reporting to me during this time frame.

Q Were you aware of the two --

MR. DELINSKY: Your Honor, foundation. Objection on that question.

Q I'll ask it this way.

Were you aware that Dr. Torres and Dr. Veres were contributing to 70 to 80 percent of the store's hydrocodone volume?

A Back in 2014, I'm not sure that I was aware of that. I wasn't on this e-mail string.

Q But did you become aware of that later as you were involved in the investigation?

A I wouldn't have been involved in the investigation. There would have been people that were investigating and the team that, you know, would have been handling that from the store monitoring program piece.

Q So your involvement would be at no layers of this?

A During this time, I'm not sure if I had another director in place, but typically a director would close these cases. I may have been part of that process, but I am not sure. I don't recall the specific case.

Q Well, you then said that there would typically be an interview done of the doctor.

Do you recall that?

A If the doctor was elevated to the Prescriber program, yes.

Q What does that mean, "elevated to the Prescriber

program"?

A So if this was part of the Controlled Substance Monitoring program in which we went in and did an audit in the stores, depending on the information that came out of that, if there were prescribers that were identified, that information would have been shared with the Prescriber team. The Prescriber team would have been done research, maybe talked to folks in the field, and then made decisions on whether or not an interview was warranted.

Q And when you testified about these issues and you said that we would do an interview and we would look on Google, and things like that, did you check -- well, first of all, I'm handing you Plaintiffs' 23330.

Is this the form that you're talking about that would be filled out?

A Yes, this is one version. We've had multiple versions over the years.

Q And have you -- are you familiar, does it draw your attention if there's a doctor like Frank Veres who has this filled out on him? Do these come to your attention?

A I see them if the doctor is being recommended for suspension. And currently, today, we do audits of certain prescribers that were cleared, as part of our practice.

Q And he -- so you know what ultimately happened with Dr. Veres years later, right?

A Yes, we ended up ceasing filling his controlled substances --

Q So this would have come to your attention at that point in time, fair?

A Yes.

Q So in that regard, I'll ask you to look at Plaintiffs' Exhibit 23330 and confirm for the jury --

MR. DELINSKY: Wait, Your Honor, I think there's some confusion. The later time it percolated up to her attention, not in this instance.

MR. LANIER: But if it percolated up, Your Honor --

THE COURT: She can look at the document, he can ask a question. If she knows something about it, she can answer.

Q Prescriber name: Frank Veres. Date and time of interview: March 2018, right?

A Correct.

MR. DELINSKY: Objection. Foundation, Your Honor.

THE COURT: We don't have a question yet. So let's have a question.

MR. LANIER: Thank you, Judge.

Q Ma'am, this information, if you'll look on page 2, was it brought to your attention in this form or in some other

form that this doctor says he has a thick list of patients he's caught diverting their medication?

Did that come to your attention?

A I don't recall.

Q Would you expect it to be brought to your attention?

A It would depend -- again, I don't know that I participated in this interview. I'm looking at the folks that are at the top, and my name does not appear there.

Q Well, ma'am, in light of the position you have, would you expect it to come to your attention if y'all interview a doctor and he says that there have been occasional suicides, but not intentionally, and definitely heroin and fentanyl overdoses from his patients? Would that come to your attention typically?

A Again, it would depend on the circumstances the prescriber provided to explain more in the context.

Q All right. We're moving along, running out of time. Let's go to phase III.

Phase III. First of all, as I ask you these questions, I want you to assume with me that during this time period up through 2019, at least, that your pharmacies in these counties dispensed another 14,130,712 doses of oxy and hydro. All right?

MR. DELINSKY: Objection, Your Honor.

Q Can you assume that with me?

THE COURT: Overruled.

Q Okay. Within the framework of that, ma'am, you have got all of these programs that you cited that started coming up in phase III, right?

A Yes.

Q And these programs, whether they're good or not, really don't do anything about the problems that happened in phase II or phase I, do they?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A The initiatives would have had an impact at the time.

Q Right. So, for example, when Mr. Delinsky puts CVS-MDL-00945, this Policy and Procedure on Red Flags -- do you remember this one?

A I do.

Q I wrote down here 10/2014. That was the date of this, wasn't it?

A Correct.

Q And not only was it the date of it, but if you look at the back, this was a brand new policy, wasn't it?

A It was.

Q And this is a policy that Mr. Delinsky talked about having red flags listed, patient red flags, prescriber red flags. Remember those?

A Yup.

Q Now, there is no reason that CVS couldn't have had this policy in place in 2000, is there?

A I'm just not sure that we had all of the information that's in this policy. This policy is pretty extensive for us to be able to put it in place during the 2000s.

Q Ma'am, there's no reason -- just concentrate on the red flags.

There's no reason your company couldn't have told the pharmacists and trained the pharmacists about these red flags in 2000, is there?

A We could have used this specific language historically if we had it, I guess.

Q Well, ma'am, you had people pay in cash for prescriptions back then, didn't you?

A Yes.

Q You had people where the patient or the prescriber's not located within the store's geographic area, didn't you?

A Yes. And pharmacists during that time were looking for those things.

And I shouldn't say that. I as a pharmacist during that time was looking for those things. I can't speak on behalf of --

Q Then if you were looking for those things back then, your company could have trained and put a policy in place on those things back then, true?

A Potentially.

Q Well, no, not potentially. What would have stopped them?

A I wasn't in the position at the time. I don't know. I don't know the reasons why they would have made that decision.

Q Well, they would have made it because it's the right thing -- the same -- let me ask it this way.

Following the law ought to be done all the time, fair?

A Fair.

Q The law hadn't changed. The law still reads "corresponding responsibility" the same way it did when you started practicing, doesn't it?

A It did. But there aren't red flags that are listed on the law under the corresponding responsibility language.

Q Ma'am, the red flags are things that you're supposed to be trained on, aren't they?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A It was just things that I knew as part of practice of pharmacy of making sure that I was dispensing prescriptions appropriately.

Q That wasn't my question, ma'am.

My question was, y'all are supposed to be trained on those red policies, aren't you?

Y'all are supposed to be trained on those red flags, aren't you?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A We train on red flags today.

Q And there's no reason you couldn't have trained on red flags during phase I or phase II, is there?

MR. DELINSKY: Objection, Your Honor. There was training in phase II at a minimum.

THE COURT: Overruled.

Q There's no reason not to have this policy in phase I or phase II, fair? At least as it pertains to red flags?

MR. DELINSKY: Same objection.

THE COURT: Overruled.

A Sir, we had other policies. I don't know about this particular policy and why or why not it might have been able to be put in place earlier.

Q All right. A couple of cleanup matters, and we'll be done.

I mean, I could go through, like, the NarxCare visual. That's like not only phase III, that's late phase III, isn't it? Right? Right, ma'am?

A It is. It's an enhancement to PMP.

Q And then the August situation in Kentucky --

A Yes.

Q Now, you testified about that, right?

A Yes.

Q It's phase III. Happened last August, right?

Mr. Delinsky's firm represented CVS in that case, correct?

A I'm not sure who represented us in that case.

Q Well, when he asked you these questions, had you done any investigation into the case itself, other than answer his questions?

A I was familiar with components of the case because I was familiar in the suspension of Dr. Hansen initially.

Q All right. So you are able to confirm with the jury that none of the prescriptions were refused for lack of medical necessity, true?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A So I'm confused by your question. None of the prescriptions that we refused to fill --

Q No, the doctor never had a prescription refused for lack of medical necessity, true?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A I don't know what our pharmacists were refusing in our store locations.

Q In fact, what your company did is sent the doctor a

notice that said for -- "Here's your one-week notice that we won't be filling controlled and noncontrolled substances," true?

A I believe that to be false, to the best of my knowledge.

Q Are you sure?

A To the best of my knowledge, we ceased filling controlled substances only.

Q Well, if you'll look at the injunction, even the injunction says "You are enjoined from refusing to fill prescriptions written by Kendall Hansen, M.D., for any pharmaceutical product."

Do you see that?

A I see that, but I believe what was at question was controlled substances.

Q And in truth, if you go back and look at the arguments in the case, at least in the briefing, the truth of the matter was a corporate decision was made to quit filling any of these prescriptions for anything without reviewing a single medical record or interviewing a single patient; true?

MR. DELINSKY: Objection. Foundation, Your Honor.

THE COURT: Overruled.

A So again, I believe we stopped filling his controlled

substances, which is our typical process when we suspend a provider. Through our research and interview process we had questions and concerns about the dispensing of Dr. Hansen.

MR. LANIER: Judge, do we break at 3 or 3:30?

THE COURT: Well, normally at 3. If you're very close to finishing, I didn't want to cut you off at the end. If you want to take a break now, that's fine.

MR. LANIER: If we can take a break now, I may be done, but it will give me a chance to look and see if I missed anything.

THE COURT: Fair enough.

Ladies and gentlemen, we'll take our usual break. 15 minutes. Usual admonitions. And then we'll pick up with Ms. Harrington's testimony.

(Recess taken at 3:04 p.m.)

(Jury present in open court at 3:22 p.m.)

THE COURT: Please be seated, ladies and gentlemen.

Ms. Harrington, you're still under oath.

Mr. Lanier, you're still up, if you wish.

MR. LANIER: Thank you, Your Honor. I do have a few more things. I'll try to move rapidly.

BY MR. LANIER:

Q Ma'am, to reorient us, we were looking at the three phases. And I guess you were not here for Katherine Keyes

as she explained -- Dr. Keyes explained these phases and how they manifested themselves in the counties and across the U.S.

But for at least for yours and my questions, you understand I've been asking them in those three ranges, right?

A Correct, I understand the years you've been asking me about when you've asked me the questions.

Q Great. And in that regard, I want to ask you just a few more questions.

By the way, the same thing was on the death chart. You can see the same phases in terms of how the deaths went.

MR. DELINSKY: Foundation.

THE COURT: Overruled.

Q And these are actual Lake and Trumbull County deaths as well as the nation and Ohio.

You see that?

A I do.

Q Okay. Now, one last thing I really want to look at with you is this red flag document that y'all finally put out, your new policy that I went over briefly. It was CVS-945, and it came out in October of 2014.

And my question to you had been, why didn't y'all do that earlier?

Remember those questions?

A I do.

Q And in that regard, a document that I failed to show you that I'd like to is Plaintiffs' Exhibit 8439. 8439.

You remember we talked about, right before the break, this new policy that was done in December of '14, right?

THE COURT: I think it's October 2014, right?

MR. LANIER: Oh, you're right, Judge. I went dense.

Q October of 2014.

MR. LANIER: Thank you, Judge.

Q Correct?

THE COURT: Well, Mr. Weinberger caught it.

MR. LANIER: Oh, thank you, Mr. Weinberger, your not-so honor.

Q October 1, 2014, this was a new policy, correct?

A Yes.

Q But you've already testified you knew about this years before, right?

A I knew about things that I was cautious on on filling prescriptions during my time that I was dispensing prescriptions on the bench.

Q Right. And we know about the wording of these because well over a year before that you got Plaintiffs' Exhibit 8439, didn't you?

A I see that I'm on the copy line there.

Q Well, the jury actually knows a lot of the people on this.

Did you know Ms. Polster came and testified here I believe about a week ago.

Do you know her?

A I do.

Q She's with Walgreens, right?

A That is correct.

Q Ms. Hiland was in here testifying just a couple of days ago with Walmart.

You know her, correct?

A I do.

Q Mr. Davis came weeks ago. He's with you at CVS, correct?

A He is.

Q And then you're the Nicole J. Harrington, right?

A Correct.

Q And so Tasha Polster has sent this document around to y'all, CVS, Walmart, and Walgreens. Right?

A Correct.

Q Because y'all are all working together trying to come up with a draft statement, aren't you?

A We were on a working committee together, yes.

Q And that working committee is of a trade association. It's a something y'all all support and work together on,

right?

A Correct.

Q And in the introduction we're able to read, "The information presented in this guide is based upon actual behaviors, actions, and trends observed by both healthcare prescribers in their practice and law enforcement and regulatory agencies in the course of their investigations of both prescribers and individuals involved in illegally prescribing, obtaining, or distributing prescription controlled substances."

Do you see that?

A I see that language written there.

Q And again, it makes the point, "This is not an all-inclusive list but a framework to support decision-making."

Do you see that as well?

A I do.

Q This wasn't something brand new. This is something that's been around for a while, isn't it?

A When you say "this," are you referring to this document or are you referring to these concepts or are you referring to red flags? I'm not sure what --

Q I'm referring to the information presented in this guide.

A I'm not a hundred percent familiar with all of the

information that is presented in the guide. I know that I would have received it back then. So I can't really speak to the entirety of the guide and if all that information was present.

Q Well, let's look at a little bit of it.

"Framework For Decision-making, when presented with a prescription for controlled substances, there are three key lenses: Prescriber red flags, individual red flags, and prescription red flags."

Do you see that?

A I do.

Q And then for each of these lenses, this guide presents the following information.

By the way, it doesn't call them potential red flags when y'all are writing amongst yourself, right?

A Well, this language right here doesn't call it that. I don't know if it's referred to that in the course of the document.

Q It says, "These are areas of concern the pharmacist could look for when evaluating the prescription. Red flags represent behaviors, actions, or trends that have been observed or associated in cases where controlled substances have been prescribed or obtained illegally."

You see that?

A I see that.

Q "Any red flags that are present should be resolved by the pharmacist as part of the decision-making process."

You see that as well?

A I do.

Q And if we look at the red flags, they're divided up.

Prescriber red flags, right?

A Yes.

Q And then y'all wind up doing the same thing in your policy over a year later when you finally issue a new policy on this, and you have a section entitled Prescriber Red Flags, right?

A Yes. But prescriber red flags are referred to, you know, if you go back to the 2010 guidelines that we sent out as well, they're articulated differently in those 2014 guidelines that you showed.

Q Yeah, this has got more of them, doesn't it?

A It does. But I just -- I didn't want to be remiss in pointing back to the 2010 guidelines.

Q Oh, we've got that, because I was asking why you didn't do that in 2000. Remember?

But this has got more of them. And even with your one with more of them, the official policy, y'all left out a bunch that had been talked to -- or that y'all had been talking about amongst yourself, didn't you?

A I'm not sure. I've not matched up the list.

Q Well, for example, number 5, "Prescriber commonly writes narcotic prescriptions for individuals between 18 to 35 years old," that's not listed under your prescriber red flags, is it?

A Yeah, but it may be listed under patient red flags.

Q It's not.

A Age is not?

Q Nah, age isn't there. Sorry.

Didn't make your list, did it?

A In this one area I guess it did not.

Q And yet it talks about the relevance, that there tends to be a higher prevalence of abuse within this age range, and that outside of the oncology or hospice setting, there's generally a low incidence rate of individuals requiring long-term therapy.

See?

A I see that.

Q Y'all didn't include number 6, that the prescriber operates on a cash-only basis, to pick up those doctors that only work with cash.

You didn't have that in there, did you?

A Yeah, I'm not sure if that was in there.

Q Well, you can look, ma'am. It's not long. There it is.

It's not in there, is it?

A It's not, but I don't think the list was meant to be exhaustive.

Q Right. This list that is in the document that y'all were e-mailing amongst yourself specifically says this isn't exhaustive. But you've got ones that y'all are talking about why it's important and why it's a red flag, and you don't include it in your own policies over a year later when they come out. Right?

A And I'm not sure if this is the final copy and what made the list of things that were the final recommendations. It does appear, at least my copy, it doesn't in yours, that it is a draft version that's still being edited.

Q I'm not fussing that point, ma'am. I don't care one way or the other if it's a draft or real.

You understand?

I'm saying, y'all were told why these are relevant red flags. Y'all are discussing it amongst yourself. And you don't come out with a policy for over a year later, and when you do, you don't include some of these. True?

A Our policies prior to this included red flags. And again, we don't usually -- we articulate that it isn't an exhaustive list.

Q All right. So, ma'am, help me here, because I feel like we're not communicating well.

Show me your policy that has the red flag for

prescribing individuals between 18 to 35 years old. Show it to me or tell me when it is, and I'll find it.

A Yeah, I don't know that that particular specific line item is in a policy.

Q Ever?

A I'm not sure.

Q So you're not swearing under oath that it was already there in 2010, are you?

A I'd have to go back and look at the document from 2010.

Q It isn't there. You can look -- if you want to look, go look.

A I don't see it there.

Q Mm-mm. Or that the prescriber's on a cash-only basis, not there, is it?

A It is not.

Q All right. And again though, you shouldn't have -- the public shouldn't have to wait for CVS to get in legal trouble before they start being responsible under the law. Agreed?

MR. DELINSKY: Objection, Your Honor.

THE COURT: I'm going to sustain it the way it was asked.

MR. LANIER: All right. I'll reword it, Your Honor.

Q We should be able to expect CVS to follow the law at all times, shouldn't we?

A Yes.

Q CVS, y'all have a legal department with in-house lawyers, don't you? You have a Regulatory department that's in charge of making sure regulatory compliance happens, don't you?

A Yes.

Q You have people whose job it is to make sure that y'all understand the law, that you train on the law, and that you follow the law. True?

A Yes.

Q And it's been that way ever since you started, hasn't it?

A I can't speak to all the departments when I first started as a pharmacist if those folks were all in place, but I can speak to that in my role today.

MR. LANIER: All right. I'll pass the witness, Your Honor.

THE COURT: Okay. There's an opportunity for any of the jurors, if you have questions, to provide them to Mr. Pitts, and then I'll show them to counsel. Thank you.

This is our protocol, Ms. Harrington.

(Juror question review.)

MR. DELINSKY: May I proceed, Your Honor?

THE COURT: Yes, Mr. Delinsky.

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REDIRECT EXAMINATION

BY MR. DELINSKY:

Q Okay, Ms. Harrington, we're going to go through the questions from the jury before we get to my questions. Okay?

A Sure.

Q And I'll just pick them out random order, okay?

A Okay.

Q All right. There's a number on this page.

"Do the commissioners of the New Hampshire Board of Pharmacy assist in reprimanding pharmacists for improper dispensing/conduct?"

Let's stop there.

A Okay. So it would depend on the circumstances around that, but there have been instances in which improper dispensing and conduct, the New Hampshire Board of Pharmacy does provide recommendations on reprimands, fines, letters of consent, things like that.

Q Okay. Let's keep going.

"If yes, with you being employed by CVS, how do you ensure there's not a conflict of interest or bias should a CVS pharmacist need reprimanding?"

A So I recuse myself from any of those conversations

and/or any decision-making at the end. So I can't even participate in the conversation at all, which is sometimes just frustrating because I feel I have additional context that I can provide to a situation and explain to other Board commissioners because they might not work in retail or they might not work for CVS, they don't understand it. But we are not allowed to participate in anything that we might have a conflict of interest.

So whether it be through that or maybe somebody like a pharmacist that might have worked for me prior when I was a pharmacy supervisor in New Hampshire, I recuse myself from those cases as well.

And our Board counsel is really good at helping us make sure that we're not violating anything by participating in something where we might have a conflict.

Q And Ms. Harrington, when you say "Board counsel," am I right that's not CVS counsel, it's counsel to the New Hampshire Board of Pharmacy?

A Correct, correct. We operate under the Office of Professional Licensure, and they have counsel that represents each of the Boards, Board of Medicine, Board of Pharmacy, Board of Nursing.

Q Next question. "Are pharmacists giving the doctor review interviews?"

Why don't we go through them all.

"What are the questions that are asked? Who audits the results of the interviews? Is there a specific script that's used?"

A Yup. So there are folks that are on my team that are doing the interviews. There's always at least one pharmacist, and we always have multiple people on the interview. We feel that it's helpful to have two people to be able to hear what the provider says, make sure that we've captured all the right information, also to serve as a witness just in case.

We do use a questionnaire, but we shape that -- the questions based on the concerns that we might be seeing. You know, so not all the prescribers that are being escalated look the same, so we might need to dig deeper into one problem or another.

So, like, if you were to look through a series of the doctor questionnaires, they might not all be filled out a hundred percent completely because we might be delving into a different area with a different provider, or there might be a section on there that that provider doesn't necessarily have a concern with, so we might not ask those questions based on that.

And then who audits the results of the interviews? That team makes recommendations on prescribers that we would then take an action. That is brought to a committee or

group that Tom Davis, myself; we will oftentimes have one of our attorneys with us.

We also, if we have a really challenging case that we're grappling with some very specific more medical questions that would be -- we would need a doctor's expertise, we have medical directors that we can call in to join the conversation to be able to help us with that.

We've had some really complex medical conditions that we've struggled and grappled with whether or not the prescribing is appropriate, and the medical directors will help us evaluate that because we just don't have the background.

And then --

Q I'm sorry. Is there --

A I was just going to say, and then the other thing, we now audit a subset of doctors that are kept active just to make sure that we're not missing anything. So I participate in those audits along with the team just to make sure that the thinking and any questions that they might have, concerns that they might have, are being answered.

Q Let me just try to follow up and tie together this audit question, which is a good and important one.

If your team beneath you who reports to you decides to suspend a doctor, that gets elevated in every instance?

A Yes.

Q Okay. If your team decides not to suspend a doctor, traditionally that hasn't been elevated, correct?

A That is correct.

Q So that wouldn't be audited, correct?

A For everybody except for the small group that we audit just to validate the thinking is appropriate.

Q Okay. "Have you and CVS been an advocate for a national PDMP?"

A We have. So we've spent a lot of time talking to many folks about a national PMP. I think the challenge is that people may disagree about what a national PMP is and how that should be created, because there have been different solutions that have been proposed at different times.

So there may be specific instances in which I may not have agreed with a proposal, but what we're looking for is an actual national PMP so no, you know, state -- states doing things differently because we operate in all of our states.

It's a challenge when we have this kind of patchwork of how pharmacists are seeing or using PMP or PMP looks differently. It's helpful if we could have one solution across all of our stores.

I would love to be able to do this. So we --

Q Let me just read it into the record --

A Sorry.

Q No, that's okay.

"Have you taken data from 10 years ago and entered that information into NarxCare to see what risk levels were like when the opioid medication was being heavily marketed?"

A So the use of NarxCare or the PMP in most instances is heavily regulated of when and how you can access it and how you can use the information, and that's due to privacy concerns. This is private healthcare information that's been entered into the database, and so there's many rules on it.

So we can't use that data in any way other than pursuant to patient care for the prescription that's in front of me as I'm filling that prescription. So we unfortunately don't have the ability to be able to use it retrospectively or even more broadly to be able to maybe do some different things in this area. Maybe that will change someday, but today we're just not able to do that.

Q Ms. Harrington, do you have access to the secret sauce, the algorithms that go into generating the NarxCare score, so you could just replicate it on our own, 10 years of past data?

A No. We've asked Appriss to be able to share that with us, and they have not. It's a proprietary algorithm. It's their product that they sell. And so therefore, they don't share that with us.

Q Hard question. "How many CVS pharmacists have been charged by law enforcement for any job-related wrongdoings or breaking the law?"

A To be honest, I don't know the answer to this question because there are pharmacists in our buildings that might divert medications for their own self-use, something along those lines, and those pharmacists obviously would be terminated and they would be subject to, you know, legal ramifications resulting from that. But I honestly just don't know the answer to this question.

Q To your knowledge, have any CVS pharmacists been charged criminally for improperly just knowingly dispensing, filling illegitimate prescriptions?

A Not to my knowledge.

Q Okay. These are great questions.

Okay. Ms. Harrington, "Explain bullet 3 on page 2 of MDL-1728."

But I only have page 1 right now, so maybe we'll come back to that when I get page 2.

MR. LANIER: There's a question on the back of that.

MR. DELINSKY: Yeah, I'll do the one on the back.

Q "So the score" -- and I believe this is a reference to the NarxCare score -- "is actually 00 to 99 on that specific

Rx"?

A Yeah, because the last number indicates the number of prescriptions that that person is receiving, I believe. So the risk score is actually the first two digits, and the last digit represents the number of prescriptions. But when we talk about the risk score, we talk about it as a three-digit number.

I hope that answers the question.

Q Okay. "Explain bullet 2 on 17" -- "Bullet 3 on CVS-MDL-1728, page 2."

I'm going to do it this way. Here's page 1.

Oh, no, maybe -- yeah, I think this is page 1.

"Can you explain bullet 3, which says the last digit of the Narx score equals the number of active prescriptions for that drug type"?

A Yeah. So if I was receiving two prescriptions that were opioids, the last digit of my NarxCare score would be a 2. So say if my risk score, the first two numbers was, say, 20, my score would be 202.

Q Got it.

Now, I believe this is the second page. Just out of an abundance of caution, why don't we go to the third, which maybe is the shaded portion down there, and see if you can explain that.

A And these are just score ranges that we had been

provided by NarxCare, which I think is a little bit confusing in this situation because it straddles kind of the lower range and the upper range. But it talks about 24 percent of scores fall within that range.

Q Okay. And this range, am I right, would include "be confident," "be curious," and some "be cautious"?

A Yeah. The way that this is, and it's because Appriss was changing their guidance as they were learning more, straddles I think all of those things.

Q Okay. I hope we answered all those fully.

"Has CVS been known to be aggressive with prescriber suspensions in regards to 2000 to 2018?"

A So our Prescriber program in which we were suspending doctors started in 2012. From 2012 to 2018, you know, aggressive might be in the eye of the beholder.

I think that there are patients that haven't been able to get medications from their individual prescriber from our pharmacies that would consider us to be aggressive. The doctors might consider us to be aggressive and maybe overstepping our bounds of what we can do, as evidenced by us being sued.

Would I consider us being aggressive? I don't think so. I think we're just -- we're working diligently to try to understand prescribers that we just don't want to fill prescriptions, controlled substance prescriptions for any

longer.

Q "When a prescriber is being investigated by CVS, do you or can you report to DEA and the state Board since you cannot investigate fully?"

A So we do provide our prescriber information to certain states. We have offered it to DEA, but they have not taken us up on our offer to provide the prescribers to them.

Q Okay. And let's break it down.

Are you talking about when the company ultimately suspends, chooses to suspend a doctor?

A Yes.

Q How about if the company is in process of investigating?

A I think it would depend on the facts and circumstances. I can tell you this week I was on the phone with a DEA agent because we were looking at a particular provider. It's a very difficult case.

I also understood that there was a DEA agent that had been in one of our store locations that was looking to get some copies of prescriptions written by this provider. So I reached out to them to ask them some questions and see if there was any information that could be shared.

It's a very delicate topic because they can't really share information on an active investigation, but I was able to provide some information, and we have time set up to talk

again next week.

So there's times when we can do that. I don't know that it's always feasible or welcome, but we try to do what we can when we have questions that we can't quite resolve. But there's a little niggler that you feel like things are still -- there's something not quite right, we try to use the resources that we can to try to figure it out.

Q "Do pharmacies continue to fill for a prescriber that is under investigation? How long do these investigations take?"

So let's just take the first one first.

A So our pharmacists can fill for those prescribers when they are under investigation when we're reviewing them, but we would expect that they're reviewing each individual prescription and exercising their corresponding responsibility as we would for every pharmacist across our chain for every prescriber.

And the length of the investigations vary in time, and some of it depends on how quickly we can get in touch with the provider, how quickly we schedule that interview, and how quickly it moves along. It really changes.

Q "Are copies of refusals to fill prescriptions kept? For how long and where?"

A So I'm not sure if this is referring to, like, a hard copy. Typically, if we refuse to fill a prescription, we

actually will provide that back to the patient. We don't typically take copies at CVS. Pharmacists have an opportunity, if they wanted to, to put a note in the system, but we don't keep copies as per normal practice.

Q Why is it routine for the pharmacists to hand the refuse-to-fill prescription back?

A We've been told or there's been certain instances that's the patient's --

MR. WEINBERGER: Objection, Your Honor.

THE COURT: Hold it.

If you can answer that without relating hearsay, what people have told you, ma'am. If you can't, then I guess you can't answer that one.

If there's some law or regulation that dictates a time, obviously you could say that you understand there's a law or regulation what we have to do.

BY MR. DELINSKY:

Q Ms. Harrington, are you unable to answer without revealing what somebody or some entity has told you?

A Well, it's just been legal guidance that we've received. So can I share that?

THE COURT: You can just say you received legal guidance, and this is what we do.

THE WITNESS: Okay.

A So I received legal guidance, and it's the patient's

property, it's not our property. And so it's the patient's property, and so for those reasons we return it.

Q "Is the suspension forever? Explain."

A So the suspension is forever unless a provider applies for reinstatement. The provider must be suspended for at least a year before they can apply for reinstatement. And there is a large amount of information that we require from a provider in the instance that they're asking for reinstatement.

There have been instances in which we have reinstated a provider, but they don't happen very often.

Q Another great question.

"Has CVS ever voluntarily decided to stop carrying a drug, specifically a controlled substance? If so, why?"

A I don't think that we voluntarily stopped carrying a specific drug. We've entertained the thought, but it's difficult because we want to make sure that patients that need a product like that, they have an alternative. And sometimes we need to make sure that that alternative won't cost them more or cost their insurance more, so we need it to be equivalent. So there's challenges associated with thinking about that.

But that being said, there was a product that was available that was an extended-release hydrocodone product that didn't have an abuse deterrent formulation in it. We

saw it as a concerning product, but we wanted to make sure that patients that might need it had an opportunity.

But we created a system to almost create a prior authorization, much like you have with your insurance, but at our retail locations to be able to have an extra layer of asking the right questions and talking to the doctor, and limiting the quantities, in addition to what our pharmacists were doing.

So it was a real support to them to make sure that those -- we were really narrowing those prescriptions that were available for that particular product at that time.

Q As a pharmacy company, do you think it would be appropriate for CVS to say, there's an epidemic out there, and we are just not going to carry pain medication?

A No, because patients with legitimate medical reasons that need it need to be able to have access to pain medications. There's people that are unfortunately dying or have really painful things, like sickle cell or, you know, other disease states that are very, very painful, and they need to be able to have access to prescription.

Q "When a policy is updated, how is a pharmacist notified of the policy change, and specifically what has been changed? Do they have to compare versions to see what has changed?"

A So typically, we send out a workload manager that will

inform them of the change. And many times, I can't say for certain it happens every time because some of the changes are small and less meaningful, but I think on the more meaningful changes, to the best of my knowledge, those are highlighted for the pharmacists.

Q "When did the documentation of red flag resolution become a requirement in CVS policy"?

A I'd have to look back at the policies. I want to say it probably was in 2012.

Q And I'm sorry, I didn't hear. 2012?

A I'm not sure if it was in 2012 or if it was --

Q Okay. I think best guess.

A Yeah, I am -- yeah, I'm not certain. I'm not sure if it was 2012, 2013.

Q Okay. "In regards to the red flags written policy in 2014, were you not involved in the e-mail that was sent in 12/2010 about red flags four years later?"

I think we mean earlier there, although I hate putting my words in the mouth.

A Yes, so --

Q And I think this is the December 2010 e-mail.

A Yeah, so December 2010 I wasn't in my role, so I was a pharmacy supervisor in New Hampshire. So I wasn't involved in writing that policy that included information on red flags, nor the one that was written in 2012, because it was

written prior to me coming into my role.

I came into my role at the end of October of 2012, so I wasn't involved in writing either of those. I did have editorial input on the policy from 2014. There were multiple people that contributed to that policy.

Q And while we're here, Ms. Harrington, I just want to put up the December 2010 e-mail that the juror referred to, and I just want to see if this refreshes your recollection.

It says, "Do not fill a prescription if you believe it wasn't legitimate." Then it says, "Document communications with prescriber or agent on the back of the prescription to include date, time, outcome, and name of the person."

A Okay. So 2010. I retract my prior answer.

Q That's a little different because that's resolving certain resolutions but not the resolution of every actual red flag, correct?

A Mm-hmm. Correct. Sorry.

Q Thank you.

A I was swallowing.

Q "As a pharmacist, you see a red flag and resolve it and do not document it. Is that the same as not resolving that red flag?"

A In my eyes, it is not. The act of resolving the red flag is the important activity because that's how you're establishing for yourself that that prescription is an okay

prescription to go forward and fill.

So asking those additional questions and being able to get the resolution to that, in my mind, creates a green light for you to be able to go forward with filling that particular prescription.

Q And if you go through those steps but you don't write it down, does the green light still exist?

A Excuse me, I'm sorry?

Q If you go through those steps to resolve the flag but you don't write down what you did, does the green light still exist?

A Yes.

Q Second question. "Does a rule exist that if it's not documented, it does not exist?"

A Not to my knowledge.

Q "Does RxConnect give pharmacists alerts on all or most red flags? Or does the pharmacist have to do individual research for each prescription to recognize these red flags?"

A Mm-hmm. So RxConnect gives some red flags as what we call an alert. But that being said, when you're looking at a patient profile, you've got, like, all the information right in front of you in terms of, like, where that patient lives, because you've got the address at the bottom of the screen; you've got all the drugs that are listed right in

front of you with information on the quantities and the doctor and the day supply.

That's all right there. So it's not like you have to go into multiple screens to be able to determine, you know, the red flags of, like, cash or distance or -- because the information's all right there and readily available.

It doesn't pop up and say, this patient is paying cash for this prescription as like a pop-up that sits on top of the information, but you can easily see it by just scanning down the screen that that -- there's a different method of payment.

Q And in recent years would that NarxCare score be on this page as well?

A NarxCare score would be on the verification screen.

Q Okay. "Prior to programs being put into place in 2012, how were stores and prescribers monitored?"

A So prior to 2012, our Pharmacy supervisors would be in our stores, our Loss Prevention folks would be in our stores following up on this. And I can remember, you know, personally when I had a question on a particular prescriber that we were having found was really pushing back on some of the information that we were trying to get, I talked to my Pharmacy supervisor about it. And we talked about it and we actually called the doctor together to be able to walk through that information. She had my back as I was

navigating some of those challenging waters with a prescriber that was a concern for us.

So it was more local boots on the ground, folks going into our stores that were supervising and making sure that the store teams were doing the right thing.

Q "Was the Prescriber Validation system a requirement for pharmacists to view/research prior to dispensing?"

A If I'm understanding this correctly, our Prescriber Validation system actually happens all in the background. So our pharmacists don't even see it happening, know it's happening.

What happens if it's a prescriber that's got a block on their license because their DEA registration is no longer active, their state controlled substance license is no longer active. They're not eligible to write prescription for Schedule II. They're only eligible to write for III through V. There would be a block that would come up and just stop them and say you can't fill this prescription for this prescriber for X, Y, and Z reason.

I don't know if that answers that question.

Q I hope so. "With the doctor monitoring program, are the doctors compared with their peers or all doctors in general?"

A So we compare them by specialty, because a pediatric doctor would look very different than a pain management

doctor. So we compare them by specialty and geography in the current algorithm.

We are exploring looking at all doctors across the nation, but what happens is sometimes geographically you'll see outliers, but if you were to look across the country, those outliers might not show up. So it's important for us to be able to have a geographic view as well as a specialty view.

The challenge with that is that doctor specialties are self-reported in HMS and aren't always accurate, so sometimes some of the doctors that we flag are because we have the wrong specialties for them. And so someone may have undergone additional board certifications or things like that and just haven't been updated in HMS. So sometimes that's one of the reasons why we might clear a doctor after having a conversation with them, is that we just were comparing them to the wrong set of doctors, and their prescribing is perfectly appropriate to what they're doing.

Q And I think you may have answered this, but maybe you can just -- if you don't think you have -- or just answer it nonetheless.

"If a provider is suspended, are they ever reinstated and what is the process?"

A And there is a process for reinstatement. And

prescribers have to have been suspended for at least a year before they provide -- before they apply to be reinstated, and there's an extensive amount of information that we require.

If we -- and I didn't mention this before, but if we do reinstate a doctor, we have very, very close monitoring on the dispensing that happens after that suspension.

Q "We've heard basically that pharmacists shouldn't really interfere or second guess doctors'/prescribers' decisions of what they are prescribing. What is your opinion?"

A As a pharmacist, we have to ask questions about the prescriptions that we're receiving. We have to understand more about why the medication is being prescribed for us to evaluate if it's appropriate.

Now, as a pharmacist, I don't have access to, like, MRI information. I'm not physically examining a patient. So there's information that I just don't have that would allow me to, you know, second guess what a provider is doing. But I do know about, you know, disease states and medications, and there are questions that I can ask. But it's a really, really difficult position to be put in to question things when you're not operating with all the same information that that doctor is.

But that's why relationships with doctors is really

important, to be able to ask those questions and to be able to have a conversation about those patients that you might be concerned about.

Q What do you do when you have a doctor who is seeing patients, diagnosing conditions, and making a prescribing decision that you may not think is the best prescribing decision? Is it appropriate to second guess that in that situation?

A It depends on the facts and circumstances surrounding it, right? Because there's -- you can disagree with a prescribing decision and have it be perfectly appropriate medicine. And in that instance, you would probably fill that prescription.

There's also going to be times, though, when you think it's bad medicine. If you think it's bad medicine, you know, as a pharmacist, I wouldn't fill that prescription.

Q "In RxConnect, are the text fields limited to the number of characters that can be answered? And if so, what happens if the pharmacist needs to enter more information?"

A That's a good question. I don't know the answer to that question. I don't know that I've ever written a note that went beyond a field.

If there was a text limit, you could always enter another note, so, you know, you can enter an unlimited number of notes in the system. So I think that would be the

way around that if you had a large amount of information that you wanted to apply to the patient record.

Q "If multiple providers are prescribing large amounts of controlled substances and they are practicing the same medical procedures, will this flag in the monitoring program?"

A So in our store monitoring program, we do look at MME. And I believe, because these are some of the recent -- more recent enhancements that we've made over time since 2016, and I'm not as familiar with it, but to the best of my knowledge, I think we look at an average MME, but then we also look at the number of patients with high MME prescriptions as a way to be able to identify potentially, I think what you're trying to ask here, and rather than large amounts, it's large amounts and strength.

Q Let me ask a follow-up question.

Might there be a glitch in the system if you have a community where you have the five doctors in a particular specialty are all prescribing large amounts, so as they're being compared to one another, they might not pop?

A Yeah. Our geographies are so big and the pools are typically large enough because of the number of prescribers that we have, I don't believe that's ever an issue that we've ever encountered, to the best of my knowledge.

Q And how big are the regions when you're comparing the

doctors in the algorithm?

A As it exists today, I think we have 21 or 22 different regions that we have the country broken up to.

Q Okay. 21, 22. So the regions are bigger than -- there's fewer regions than states?

A Correct.

Q Okay. "Of the 850 suspended doctors, how many are in Lake and Trumbull County?"

A I don't know the answer to that question. I should have looked that up.

Q Okay. Do you have an estimate of how many are in Ohio?

A I don't.

Q Okay. Have you found that the doctors that your program has suspended are grouped in certain areas of the country or are they spread relatively evenly around the country?

A There's some areas with higher concentration. I don't know if that's due to population of where the doctors are, but we have doctors across the country.

Q "Does your area of responsibility include C-II inventory of stores?"

A So inventory touches a lot of different groups. So my responsibility around inventory is just around that Maximum Allowable Quantity program. So I, I/my group, sets those

upper limits for stores to be able to receive.

The group that's in charge of ordering and, you know, our inventory processes and stuff is a completely different group. We felt that it was smart to keep those thresholds with us. We are not transparent with that, you know, in providing that information out to others. That's something that we calculate and we enter into the system.

Q To the extent that your group has played this role with the maximum allowable quantities, would those track stores in Lake and Trumbull Counties?

A So the maximum allowable quantities would apply to each of the stores in Lake and Trumbull County, and it would put that limit on those stores ordering.

Q "Did you find an excessive amount" in stores in either of the two counties?

A I guess if the question was before our MAQs, I don't know because I wasn't looking at Lake and Trumbull County. We were looking at across the country.

Q Okay. "How long are doctors suspended under the prescriber suspension program?"

A We talked about that. Indefinitely, unless they apply for reinstatement and are approved.

Q Okay. "What does CVS consider too much or a lot of prescriptions or pills from a prescriber?"

A I think that that really varies from prescriber to

prescriber. You know, if you're an emergency room doctor, you might expect to see a higher number, but, you know, really, really small quantity prescriptions, because they're fixing broken bones and things like that of people coming into the emergency room; versus, you know, an oncology doctor, you might be expecting to see, you know, higher quantities and different medications, more morphine and things like that.

You know, you might have doctors that are treating -- I'm trying to think. You know, surgeons that you might see like one prescription, and then but that's it for the patient, you know, where pain management you see more continuing dosing because you're treating people with chronic pain for a more extended period of time.

So understanding all those patterns is part of what we do with our Prescriber program to be able to make sure that we've got the right eyes on that prescribing.

Q "Who and how is the maximum amount of controlled substances that are ordered determined"?

A So I don't know if that's referring to the individual order, because there is a suggested order that is provided, but pharmacists have the ability to bring that down should they want. They really don't bring that up above what those ordering -- what the suggested order is unless they have a prescription that's in their queue on demand for that

particular order.

But pharmacists do have the discretion to lower the orders if they don't agree with the order that has been generated that's generated based on their prior X number of weeks of dispensing. I don't know all of those details because that's just not -- it's not my group.

Q Your group doesn't compute the suggested order?

A No, no, no. That's the Inventory group.

Q Now let's ask the question in reference to what your group does do, which is the Maximum Allowable Quantity.

If we just change the words a little bit, who and how is the Maximum Allowable Quantity for controlled substances determined for a particular store?

A Yeah, and that -- we take a share, a percentage that we feel is appropriate for that particular drug family, and that is applied to the overall dispensing in that store, so both noncontrolled and controlled.

So you get a share of pills for that particular drug family that would be appropriate for that store, and that number of pills is applied to that whole drug family.

And what I mean by that is, so if we're applying it to oxycodone, it would be oxycodone 5, 15, 30, it would be any of the extended release products, it would be all your Percocet products. All of that is under the umbrella of that one cap. And stores can order up to that cap in that

whole family, so they have flexibility with how they can order before they hit that limit.

I hope I'm not getting too technical.

Q "Why wouldn't you as a pharmacist not document a red flag and its resolution?"

A I think sometimes the reason -- well, and I'm going to speak from my own experience. I don't want to project the answer onto other pharmacists because I'm not quite sure that I can speak for them.

But in my time as a pharmacist, you might be filling a prescription for a patient and that patient isn't returning until, you know, a day later, and you've got your action note that's on the front of the prescription and the pharmacist documented, like, I need to ask the pharmacist about, you know, whatever question that they might have.

And then you're talking to the customer at the register, and you resolve that red flag, and then you go forward with dispensing that particular prescription. And you're just not in the dispensing system, and so you just don't -- you just don't write it down, but even though you've had that conversation and done the work.

You can't document in the register. You have to go back to the dispensing system.

Q "Can you please clarify exactly what training pharmacists are required to participate in for controlled

substances? How often? Are your pharmacists required to complete any kind of knowledge check for understanding?"

So let's take this in turn.

So first question: "Can you please clarify exactly what training pharmacists are required to participate in for controlled substances?"

A Yeah, so there is three, we call it LEARNet, but it's web-based training that they have to do every year. So there's two biennial trainings, one in the fall, one in the spring, that has controlled substances, and corresponding responsibility specifically in it. And then we also have the DEA training, which happens kind of in the middle of that. We try to spread it out throughout the year.

So three times a year every year, and repeatedly.

There is a knowledge check -- I'm skipping ahead, Eric, and answering the last question. Sorry, Mr. Delinsky.

For each of those there's a knowledge check, and you can't get beyond the course unless you pass those questions a hundred percent. And we try to change those questions up not to make them tricky, but to make them different to make sure that they're really testing our pharmacists' knowledge.

The other thing that I talked about is that we do have that in-person pharmacist review, the activities that they walk through, and that changes from year to year. There is no knowledge check for that because that's just a person

sitting across from another person and saying, do you understand this, do you have any questions for me. We think that that's really effective because not everybody learns the same, and learning from a web-based tool and also learning from a human in interactions we feel is most effective.

Q Separate and apart from CVS training, do Boards of Pharmacy require continuing education themselves?

A Yeah. So for me, I have to do 15 hours of continuing education every year. 10 of it can be written and 5 of it has to be live. There are certain states though that require different components, like there's certain states that require so many credits of law. I think Massachusetts requires a PMP course be taken. So there's different requirements in different states.

Q Okay. I think -- and I hope I didn't miss any questions, but I think that's all of them. So now we can go to my questions, and let's start where we ended.

When you as a pharmacist learned about the corresponding responsibility laws and regulations, did you learn the content of corresponding responsibility and the content of the law, or did you learn individual case names?

A Yeah, we didn't learn individual case names. We learned, like, the practical application of what that meant in pharmacy practice, to the best of my recollection. It

was a long time ago.

Q If I were to tell you that the first time the plaintiff counties here filed their complaint against CVS and Walmart and Walgreens was in 2019, how many years before that would RxConnect have provided sort of the mini CVS PDMP we talked about?

A 19 years.

Q 19 years before.

How many years before that did CVS start its prescriber suspension program?

A Seven.

Q How many years before that did CVS start its prescriber -- store monitoring program?

A Seven years.

Q Let me just get myself set up first.

MR. DELINSKY: And Your Honor, I know I'm going to misplace these, so I'm going to give those --

THE COURT: Thank you, Mr. Delinsky. Mr. Pitts keeps those.

Q RxConnect.

A Yes.

Q I believe you testified that it was in and around 2000 when RxConnect or RX2000, depending on the version, was providing the two years of patient data to the pharmacists?

A That is correct.

Q Okay. And back then in 2000, was a pharmacist able to see from RxConnect all the information the pharmacist needed to identify red flags?

A To the best of my knowledge. Obviously, red flags, we don't have an exhaustive list, so I want to be careful with my answer.

Q Could a pharmacist see back in 2000 cash?

A Yes.

Q Distance?

A Yes.

Q A potentially dangerous combination of therapies?

A Yes.

Q Potential doctor shopping?

A Yes.

Q Okay. Could a pharmacist see on that one page in RxConnect that a patient was filling certain prescriptions with insurance but an OxyContin prescription with cash?

A Yes.

Q Okay. And that was all the way back in 2000, correct?

A Correct.

Q All right. And we talked about the fact that that RxConnect system and all the information it provided on that screen back in 2000 was a PDMP, the best PDMP CVS could create with its own data, correct?

MR. LANIER: Leading through this, Judge.

THE COURT: Overruled.

A There wasn't a state PMP, so, yes, it was a good culling of the data that was available.

Q Was it the best culling of the data that CVS could do since CVS only had access to its own data?

A Yes.

Q Okay. And did CVS make this resource available to its pharmacists before the State of Ohio made OARRS available?

A Yes.

Q Okay. Do industries evolve?

A Yes.

Q Has the pharmacy industry evolved since 2000?

A Yes.

Q Does that mean that pharmacies were doing something wrong in earlier times simply because the whole industry has evolved in recent years?

MR. WEINBERGER: Objection.

THE COURT: I'm sustaining it the way you asked it.

Q Do you believe that CVS was doing something wrong in its provision of tools and resources to pharmacists in 2000 simply because it evolved over time and from 2012 and thereafter?

A No, I don't.

Q Let's stay in this earlier time frame.

Does a pharmacist need a list of red flags to perform corresponding responsibility?

A No.

Q Can you explain why a list isn't necessary?

A Part of the process of filling that prescription, the things that you go through is you're evaluating whether or not it's appropriate.

Q We've talked about this some before. Are there dangers associated with having finite lists?

A Yes, because if there's a finite list, there might be something that's not on that list but the pharmacist is in the mindset of just going through and checking the boxes, if you will, and they're not really thinking through the other aspects of how they should be questioning that particular prescription. And every situation is unique.

Q Now let's go to the policies, some of which do list red flags. We're going to get to that, okay?

Now, this is the 2010 Pain Management Dispensing Guidelines that CVS sent out in December 2010.

Do you remember testifying about this?

A Yes.

Q Okay. Now, Mr. Lanier pointed out that this policy came out two days after a meeting with the DEA. Correct?

A Correct.

Q If CVS meets with the DEA and then comes back to its

home office and reduces what it learned to writing and sends it out to all its pharmacists, is that a good thing or is that a bad thing?

A In my opinion, it's a good thing.

Q Okay. Let's keep going with this.

And I want to talk -- Mr. Lanier showed you the *Holiday* case to point out that there was a meeting a few days before this. Remember?

A Yes.

Q Okay. Let's look at the case.

And I'm showing you, this is Plaintiffs' Exhibit 42147-A. And I'm showing you an excerpt at the bottom of the page. I want to read it to you.

"As part of its outreach activities, the DEA, at the request of CVS counsel John Gilbert, conducted a meeting with CVS representatives on December 8, 2010."

Do you see that?

A I do.

Q If CVS itself requested a meeting with DEA, as the *Holiday* case states, is that a good thing or is that a bad thing?

A In my opinion, it's a good thing.

Q And if CVS requests a meeting with DEA, has the meeting, and reduces what it learns to writing, is that a really good thing or a really bad thing?

A In my opinion, it would be a really good thing.

Q I'm not done with the *Holiday* case. Same exhibit.

Mr. Lanier asked you if the *Holiday* case talks about potential red flags.

Do you recall that?

A I do.

Q Okay. Showing you page 62332 of the *Holiday* case.

"Distance traveled by the customer was also identified as GS Lane" -- what's GS? Do you know that means a DEA agent?

A Yes, I think that's the initials of the DEA agent.

Q "Distance traveled by the customer was also identified by the agent as a potential red flag of diversion."

Do you see that?

A I do.

Q In this place, *Holiday* is talking about potential red flags, just like Joe Rannazzisi, correct?

A Yes.

Q Okay. Let's look at another portion of the opinion.

"The method of payment is also, in Doering's opinion" -- and Mr. Lanier has explained earlier in the trial, Doering was a Government expert, a DEA expert -- "the method of payment is also, in Doering's opinion, a potential red flag of diversion."

Do you see that language?

A I do.

Q And is that consistent with Joe Rannazzisi's slide on potential red flags?

A Yes.

Q And can you remind the jury again what it means to you for -- what the word "potential" means to you in connection with red flags?

A It just means that there might be things that you know that you can quickly evaluate before it moves to the place of being a red flag. So, again, like cash, not everybody that pays cash has a red flag. It's just when their -- if you look at their dispensing history and they've been using insurance and they're requesting to pay cash for a controlled substance, that would then be a red flag.

Q Okay. Now, I want to imagine that you had to have a list of red flags in these policies, okay? And I want to ask you a few questions about that. But before I do, I think you testified about it.

Do the regulations on corresponding responsibility list red flags?

A Not to my knowledge.

Q The Pharmacist's Manual, you provided some testimony on the Pharmacist's Manual.

Do you recall that?

A Yes.

Q Okay. And I believe this already has been admitted into evidence. I'm showing you the 2010 Pharmacist's Manual.

MR. DELINSKY: And, Your Honor, this is Defendant MDL 507.

THE COURT: Thank you.

Q Do you recognize this, Miss Harrington, as the 2010 Pharmacist's Manual?

A Yes.

Q Okay. And let's just step back and level set on this.

This is a manual -- is this a manual -- who prepares this manual?

A The DEA.

Q What's the purpose of the manual, to your knowledge?

A To take the Controlled Substance Act and other regulation and make it easier for pharmacists to understand their obligations.

Q The purpose of the manual -- is the purpose of the manual for pharmacists to provide them a resource?

A Yes.

Q Okay. And we can see here, United States Department of Justice Drug Enforcement Administration.

Do you see on the second page, "This manual has been prepared by the Drug Enforcement Administration, Office of Diversion Control, as a guide to assist pharmacists in their

understanding of the Controlled Substances Act and its implementing regulations as they pertain to the pharmacy profession."

Do you see that language?

A Yes.

Q Is that what you understand this document by DEA to be?

A Yes.

Q Okay. And who is -- what is one of -- the name of one of the persons listed there above that I just highlighted?

A Joe Rannazzisi.

Q And that's the Joe Rannazzisi that you've already testified about, correct?

A Correct.

Q Okay. I want to look at a few pages in here.

I'm showing you the Corresponding Responsibility section of the 2010 DEA Pharmacist's Manual. This is page 30 of the manual.

Do you see that?

A Yes.

Q How many red flags are identified in the Corresponding Responsibility section of the DEA manual?

A I'm reading it quickly.

None.

Q None, right?

A None, yes.

Q Let's go through this a little more.

I'm showing you another section of the DEA manual for pharmacists. This is the section on Dispensing Controlled Substances for the Treatment of Pain.

Do you see that?

A I do.

Q How many red flags are identified in the section of the DEA manual on the dispensing of pain medication?

MR. LANIER: Page?

A None.

MR. DELINSKY: Page 53.

Q And your answer was "none"?

A Correct.

Q I'm showing you the section of the DEA manual that provides definitions based on the controlled substances act and its regulations.

Do you see that?

A I do.

Q Is it in alphabetical order or does it appear to be?

A It looks like it's in alphabetical order.

Q Okay. Going to go to Rs. Do you see that there's an R at the bottom?

A Yes.

Q And then Rs continue up top.

Do you see that?

A Yup.

Q And I'm at page 64.

Does the DEA manual include the phrase "red flags" in its Definitions section?

A It does not.

Q Showing you one last section of the DEA manual.

Do you see, this is the Pharmacists Guide to Prescription Fraud, correct?

A Yes.

Q What's your understanding of prescription fraud?

A What's my understanding of prescription fraud?

Q Yeah, what is prescription fraud?

A It's when a patient will alter a prescription that they've been given or create a fake prescription or steal a prescription pad from a prescriber.

Q Okay. Maybe to see the doctor as well? Might that be prescription fraud?

A Maybe.

Q Okay. Now, in this section, do you see that? Criteria are listed that may indicate a prescription's not legitimate.

Do you see that?

A Yes.

Q Okay. And this is the first time -- now, the DEA

manual doesn't call them red flags, right?

A No, they don't.

Q Okay. Now, this is the first time that we have some lists here, okay?

Does cash appear on this list?

A It does not.

Q Okay. Mr. Lanier made a big comparison, a big deal of the fact that CVS's policies don't have age as a red flag.

Is age here?

A I don't see it.

Q Okay. Is this a comprehensive list of potential warning signs?

A No.

Q Okay. Is the DEA's manual for pharmacists that Joe Rannazzisi's name is on, is it deficient because it doesn't have the comprehensive list of red flags that Mr. Lanier might like to see in it?

A No.

Q Now, I'm going back to the 2010 policy we've been talking about.

Does this policy nevertheless identify warning signs?

A It does.

Q So 2014 wasn't the first time, correct?

A Correct.

Q And the warning signs continue onto the next page,

correct?

A Correct.

Q Not comprehensive, but a decent list of warning signs, correct?

A Yes.

Q And do you recall that the 2012 policy we looked at contains a list of red flags?

A Yes.

Q Okay. That was before the 2014 policy that Mr. Lanier was looking at, correct?

A Yes.

Q And that was before the 2013 e-mail that Mr. Lanier was talking to you about, about red flags from Ms. Polster, correct?

A Yes.

Q Do you remember this training you testified about, CVS 980?

A Yes.

Q And what was the date of this training?

A September 2012.

Q Does this training in 2012 identify potential warning signs as examples?

A Yes.

Q Do those potential warning signs continue onto the next page?

A Yes.

Q And again, that was in 2012, correct?

A That is correct.

Q And 2012's before 2014, correct?

A That is correct.

Q But there's a more important point to be made here. We could talk all we want about what the wording is in one policy or another, but does the wording of a policy, does the existence of a list, is any of that necessary to the effective performance of corresponding responsibility?

A No. Our pharmacists are exercising that responsibility prescription by prescription in our stores.

Q And is a list necessary to that exercise?

A It is not.

Q Dr. Veres, do you know if Dr. Veres is licensed by the State of Ohio today?

A Yes.

Q Is he licensed?

A He is.

Q To your knowledge, has his license ever been suspended or revoked?

A Not to my knowledge.

Q And I want to end, Ms. Harrington, with the discussion about the settlements in the *Holiday* case. Okay?

How many CVS pharmacies did the *Holiday* case concern?

A Two.
Q And they were both in one town, correct?
A Correct.
Q What town?
A Sanford.
Q The conduct was over 10 years ago?
A Yes.
Q Okay. And I think you've already testified to this. Just in Florida alone, how many CVS pharmacies?
A Around 850.
Q In Florida. Now, that number may have been lower in 2011, correct?
A Correct. I think it was probably around 700-ish back at that point in time, to the best of my knowledge.
Q Okay. Let's assume that's 700.
Would you agree with me that two pharmacies is a fraction of 1 percent of 700?
A Yes.
Q How many pharmacies does CVS operate throughout the country?
A Around 10,000.
Q Is it fair to say that those two CVS pharmacies comprise an even smaller fraction of 1 percent of all CVS pharmacies?
A Yes.

Q Mr. Lanier talked about a Maryland settlement, okay? Remember?

A Yup.

Q Do you recall how many Maryland pharmacies that concerned?

A I'm not sure of the exact number, but it was in, you know, a dozen or more.

Q How many pharmacies does CVS operate in Maryland roughly?

A 280.

Q 280?

A I believe, to the best of my knowledge.

Q Were any of the Maryland pharmacies that were the subject of that settlement in Ohio?

A No.

Q The Rhode Island settlement, did the Rhode Island settlement involve any pharmacies in Ohio?

A No.

Q The Texas settlement, did the Texas settlement involve any pharmacies in Ohio?

A No.

Q Did any of the settlements Mr. Lanier asked you about concern a CVS pharmacist in Lake County?

A No.

Q Did any of the settlements Mr. Lanier discussed

concern a CVS pharmacy in Lake County?

A No.

Q How about in Trumbull County?

A No.

Q Did any of the settlements concern a pharmacy -- a CVS pharmacy in Ohio?

A No.

Q Did any of the settlements concern a CVS pharmacy in the Midwest?

A No.

Q To your knowledge, has DEA ever suspended or revoked the license or registration of any CVS pharmacy in Lake and Trumbull County?

A No.

Q To your knowledge, has the State of Ohio ever suspended or revoked the license of any CVS pharmacy in Lake or Trumbull County?

A No, not to my knowledge.

MR. DELINSKY: Okay. Ms. Harrington, nothing further at this time.

THE COURT: Okay. Any follow-up from either Walgreens or Walmart?

MR. STOFFELMAYR: No, Your Honor.

MR. MAJORAS: No. Thank you, Your Honor.

THE COURT: Mr. Lanier, you're up.

- - - - -

RECROSS-EXAMINATION

BY MR. LANIER:

Q Ma'am, with due respect, you said those settlements didn't concern Ohio?

A I said that they didn't impact Ohio stores.

Q Oh, but they absolutely did, didn't they? You had to make policy changes with a number of those settlements, didn't you?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Overruled.

A I'm not aware, to the best of my knowledge, of policy changes that were required as part of those settlements.

Q Ma'am, even if you don't have them spelled out specifically, they are certainly steps that y'all took because the problems that you had were part of the CVS chain stores, weren't they?

A We always tried to take a look at the issues that we had in certain areas and make sure that we were learning from them and providing tools to be able to protect against it.

Q Because the policies that applied in Florida are the same policies that apply in Ohio, aren't they?

A That is true, but the behavior --

Q Ma'am, no.

MR. DELINSKY: Your Honor --

THE COURT: Let her finish the answer, please.

MR. LANIER: Okay, Judge.

A But the behavior -- those two stores in Florida weren't stores in Ohio.

Q But, ma'am, you know from that that there were people from Ohio that were buying from those two stores in Florida, don't you?

A I don't know that for certain.

Q It's in the *Holiday* case. Did you not read that section?

A I don't recall specifically language around Ohio dispensing.

Q And the policies and the training that applied in Florida applied all over the U.S., didn't it?

A It did.

Q The policies and training that applied in Texas applied in Ohio, didn't it?

A It did.

Q The policies and training that applied in Maryland applied in Ohio, didn't it?

A It did.

Q The policies and training that applied in Rhode Island applied in Ohio, didn't it?

A It did.

Q You're responsible for supervising 30,000 pharmacists; is that right?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A No.

Q So how many pharmacists are under your scope of your job, making sure that they follow the law and that they are trained properly? How many?

A Your question to me was do I supervise those pharmacists. Those 30,000 pharmacists have direct individuals in which they report in to and supervise.

Q Ultimately though, how many pharmacists are under your oversight for purposes of making sure that policies and training are implemented on the issues of corresponding responsibility?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A That is the role of the direct supervisor, to supervise those individual pharmacists. We -- at my level, we have corporate programs to be able to support the pharmacists.

Q And that's my question.

How many pharmacists are you trying to support from corporate in being able to be trained and follow the law on corresponding responsibility?

A I support 30,000 pharmacists.

Q And that's one reason training is so important, isn't it?

A It's one of the things that we do. And, yes, it is important.

Q Okay. And again, the settlement agreement that y'all entered into in the Florida situation did not limit itself to Florida, did it?

A Could I please see that?

Q I'm sorry, ma'am?

A Could I please see the settlement agreement that you're --

Q Yeah, I've got to get a copy of it to you, and I'm glad to do so.

Can I just put it on the screen? Is that adequate?

A I would rather have a copy, so that way I can --

Q Well, ma'am, in the interest of time, I'm not able to do that. So my question to you, I'll just ask you simply, isn't it true -- I mean, heavens, your job got created because of what happened in Florida, didn't it?

A My role became available in 2012.

Q Is that a "yes" answer?

Your job was created because of what happened in Florida, wasn't it?

A My job was created because the company was changing

the way that we had oversight.

Q Because of what happened in Florida?

A Yes.

Q You've testified to that before, haven't you?

A Yes.

Q Thank you.

And then on all of these dates and dates and dates, and the policies that Mr. Delinsky --

MR. LANIER: You see, this is the problem with having a nickname for him, Your Honor. It gets me in trouble. It's a friendly nickname.

THE COURT: Mr. Delinsky?

MR. LANIER: Yes, I have a nickname for him.

THE COURT: You probably have one for me too.

MR. LANIER: No, Your Honor.

THE COURT: It's okay.

MR. LANIER: Absolutely not.

THE COURT: It's okay, it's okay.

MR. LANIER: Absolutely not.

MR. DELINSKY: And to clarify the record, he called me Bubba this morning.

MR. LANIER: Generally it's D-dog, but I'm not doing that.

BY MR. LANIER:

Q With due respect to Mr. Delinsky, we went through real

clear these dates in great precision and looked at when your various policies were, which phase.

Remember?

A I'm not sure where your line is there because I think that we talked about policies in 2012, and that would be phase II. Right?

Q Yes, phase II was 2012, but this MAQ program, the forgery program, NarxCare, the 2016 guidelines, the training, all of that kind of stuff, that was phase III, right?

A It was. But just to clarify, the 2016 CDC guidelines were written by the CDC. That was the first time that they had come out with those guidelines on pain management. That isn't something that CVS did.

Q And one of the reasons they had to come out with those guidelines was because of what y'all were doing, wasn't it?

MR. DELINSKY: Objection.

THE COURT: Overruled.

A It was because primary care doctors needed guidance.

Q And then you get asked a boatload of questions about the Pharmacist's Manual from 2010 where Mr. Delinsky, with his voice raised, says, are there any red flags on page 30, 53, 64.

Remember that?

A I do.

Q The purpose of this DEA manual, however, is not to teach the law, is it?

A We talked about the purpose is to be able to educate on the Controlled Substance Act and support them in the interpretation in a less legal manner than what is the Controlled Substance Act.

Q And you don't really know this booklet very well, do you?

A I do.

Q Okay. Good. Then can you tell us which section this page 30 came under where you're looking for the red flags without looking?

A No, I can't recall that without looking at the Pharmacist's Manual.

Q This corresponding responsibility, all of that comes under a section of what are valid prescription requirements.

Do you see that?

A I do. But I see the language of corresponding responsibility.

Q Yes, because one of the things in corresponding responsibility is you have to make sure it's a valid prescription, don't you?

A Under corresponding responsibility you can't fill a prescription that you know not to be valid.

Q You can't fill one that's not written for legitimate

medical reasons, is the language, right?

A Correct.

Q But this whole section is talking about valid prescription requirements.

A Can you just repeat that question? I think you said write a prescription. We don't write prescriptions.

Q Okay. Not write, dispense.

A Correct.

Q A written prescription has to be -- the corresponding responsibility, "An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is an invalid prescription. The person knowingly filling such a purported prescription shall be subject to the penalties."

Do you see that?

A Correct.

Q That's talking about the corresponding responsibility on whether the prescription is valid or not.

Do you see that?

MR. DELINSKY: Objection, Your Honor. That is the corresponding responsibility language.

THE COURT: Overruled.

Q Do you see that, ma'am?

A I see that, but that's the language in the Controlled Substance Act that is the --

Q And I'm not fussing that, but I'm saying in this manual it's put out under that section.

Do you see that?

A But it's just an explanation of what corresponding responsibility is.

Q Okay. Red flags. Who has the corresponding responsibility under the law? CVS pharmacists or the DEA?

A Who has corresponding responsibility?

Q Yeah.

A Pharmacists have the corresponding responsibility. We just read the regulation together.

Q Yeah. So it's not the DEA anyway?

A It is not, but they're the regulating body for us.

Q And y'all have lawyers whose job it is is to figure this stuff out, isn't it? True?

A Yes, we have a legal team.

Q And you have a regulatory department who's supposed to keep up with the cases and know what they involve, true?

A Our regulatory team works with Boards of Pharmacy, yes.

Q Next. Mr. Delinsky asked you, CVS requests a meeting with the DEA, is that a good thing, referencing the *Holiday* case.

Remember that?

A Yes.

Q And you said, yes, that's a good thing, right?
A Yes.
Q Here's my question. When CVS is under investigation, an order to show cause is issued, investigations show major problems, do you think that's a good thing?
A No.
Q And when your lawyers try to meet with them to try to mitigate the damage and --
MR. DELINSKY: Hold it, Judge. Judge.
THE COURT: That's sustained.
MR. DELINSKY: And there's a difference in timing here.
MR. LANIER: No.
THE COURT: I sustained the question.
MR. LANIER: All right.
Q Ma'am, you don't know why those lawyers called the meeting, do you, or asked for it?
A I do not.
Q You never saw the order to show cause, did you?
A I did not.
Q You never saw the investigation file, did you?
A I did not.
Q You didn't know what was pending at the time, did you?
A I do not.
Q But you have been involved in trying to negotiate down

agreements with the DEA yourself, haven't you?

A I've been involved with the DEA when they're investigating an issue.

Q And you've been involved and gotten credit for negotiating them down on the penalty, haven't you?

A I've gotten -- I've shared with them the work that we've done as part of our negotiation process.

Q But in your personnel file you're specifically lifted up for helping reduce the penalties on CVS, true?

A As part of our negotiations, yes.

Q And you say it's a good thing that the company sent out policies after being in trouble --

MR. DELINSKY: Objection, Your Honor. The chronology just doesn't work. It's not accurate.

MR. LANIER: This was his question.

MR. DELINSKY: It's "trouble."

THE COURT: Overruled.

MR. LANIER: I'll take out the word "trouble" if that's a problem, Your Honor.

THE COURT: Yeah, that's the problem.

BY MR. LANIER:

Q You said it's a good thing the company sent out policies after meeting with the DEA on the law, right?

A Yes.

Q Wouldn't it be good not to have to have that meeting

to start with?

A Yes. But when there's a necessary meeting to take action from, it is important.

Q Right. My whole point though was, you could have done that 10 years earlier, couldn't you? You didn't need to wait for the DEA for you to send out that -- or for the company to send out that e-mail; fair?

A I don't know that we had the information.

Q Are you familiar with these two words? Proactive and reactive.

A I am.

MR. DELINSKY: Objection, Your Honor. We're far afield from the issues.

THE COURT: Overruled.

Q Proactive means you're taking the initiative. Reactive means you're reacting to something that's happened, right?

A Correct.

Q What we're seeing here is a reaction instead of being proactive. Fair?

A It depends on the individual circumstances that you're asking me about.

Q I'm asking you about the *Holiday* -- that's all right. The jury gets it.

RxConnect. RxConnect in 2000, be honest, did it alert

to red flags?
A And we talked about this. It doesn't alert. It doesn't show a pop-up, but the information is present.
Q Well, the information is there but not there, in a way -- you know how you've got all of these programs now that try to give visuals and confirmation, and explain to the pharmacists?
A Yes.
Q Or some of the other companies that have forms that have to be filled out, or something like that, for the dispensing of controlled substance, right?
A Yes.
Q That's not in your RxConnect in 2000, is it?
A It's not, but as a pharmacist practicing in 2000, that wasn't anywhere. It wasn't typical. So you used what you had to be able to get the information that you needed, and the information was readily retrievable.
Q But Ms. Harrington, in 2000, y'all didn't even have a red flag policy, did you?
A Not in 2000. But, again, you knew the things that you needed to look for.
Q Well --
A Or I knew the things that you needed to look for.
Q So you're here to testify and you testified to the jury that you know all the data that was there for

RxConnect, but you never checked to see whether or not it's for "sale" rather than "use"?

MR. DELINSKY: Objection, Your Honor.

THE COURT: Sustained.

Q Are you trying to tell us that RxConnect would identify pattern prescribing by doctors?

A No, but a pharmacist would see that in the course of their dispensing working in a pharmacy day in and day out.

Q Wait. Some of these pharmacies dispense 500-plus prescriptions a day, don't they?

A Potentially, yes.

Q And you think they're going to remember what happens one week, two weeks, three weeks later?

A But being in a pharmacy, being in a community with your customers and with your -- with the doctors that are in that community, you do see those patterns and you recognize them. And I can attest that I've seen things like that when I was working on the bench.

Q Then you don't need all these algorithms y'all have spent all this money on, you just need pharmacists who are practicing?

A The algorithms can make it easier. It can support pharmacists.

Q I mean, to be candid with you, I forget some of the testimony, witnesses that happened three weeks ago in this

trial, and I do this for a living.

Do you expect us to believe that the pharmacists are going to identify prescriber patterns just pell-mell on their own?

A It happens. Does it happen for every single prescriber that they're filling for? Not necessarily. But does it happen for the majority of prescribers that are in their community? They see them, they know them.

Q Okay. Go back to my question though.

RxConnect doesn't identify pattern prescribing, does it? Yes or no?

A It does not.

Q Doesn't identify the trilogy combination, does it?

A It does because you can see the prescriptions on the patient profile in one glance.

Q Well, you've got to go back and look at all of the different prescriptions that are in there. It doesn't pull them up automatically, true?

A You can do "P" for profile and you can see all of the prescriptions that the patient has dispensed or you have a hot key to be able to see it, and they're all right there.

Q Yeah, you can do "P" for profile, but "P" for profile requires you to do that as opposed to it automatically just coming up, right?

A Right. But that's part of your normal practice, is

filling prescriptions as a pharmacist, to be able to review that profile.

Q Next subject. CVS pharmacists that have been criminally charged, one of the juror questions. You don't really know the answer to that, fair?

A I am not a hundred percent sure. To the best of my knowledge, I don't believe so.

Q Next juror question I want to go back to.

Do you fill prescriptions on doctors being investigated? And you said yes.

Remember?

A Yes.

Q The truth of the matter is, it's a little bit more. CVS doesn't even communicate to their registered pharmacists routinely when the home office is investigating a doctor, true?

A It depends on how the information comes to us when we're investigating a pharmacist. Some come from pharmacies, some come from conversations with them. Others of them when they're coming from the algorithm aren't proactively communicated until we do our investigation.

Q Well, ma'am, you were asked this question in the *Mimms* case, weren't you? That's the Rhode Island case, *Mimms vs. CVS Pharmacy*. Do you remember that case?

A I believe it was an Indiana case.

Q Yes, ma'am, but it -- excuse me, you are correct.

In 2017 you were asked this question: During that process, would you communicate with the supervisor or the pharmacist who referred that prescriber to you?

And you said: We would not communicate back -- information back. Our review process was separate than their corresponding responsibility at the store level.

Is that what you testified to?

MR. DELINSKY: Objection. That's not --

A If that's what the record is --

THE COURT: Overruled.

Q I'm sorry, ma'am. Is that what you testified to?

A I don't have a copy of it in front of me, but I'm assuming that you are reading from the record.

Q And I'll show it to you if I need to, but my first question is -- there are rules I have to do to do that.

Is that your testimony today? Do you agree with that answer?

MR. DELINSKY: Objection.

A Like I said, there were times that we are not communicating to --

THE COURT: Well, you can answer.

A There are times that we are not communicating to the field, and there are times that we are communicating to the field.

Q So during that process of investigation, would you communicate with the supervisor or the pharmacist who --

THE COURT: Are you asking her about that specific investigation, or generally?

MR. LANIER: No, Your Honor, just in general, the concept of what she would do when she has a prescriber that has been identified with some concerns that you want to further investigate or that has been escalated from a store team or a pharmacy supervisor, how would you go about doing it.

Q In that situation, ma'am, is it true y'all would not communicate the information back?

A It would depend on the circumstances. Oftentimes today I know that we are talking to store teams and pharmacy supervisors about those instances.

Q Today you are. That was 2017 in the *Mimms* case where you testified, wasn't it?

A I believe so.

Q Which brings up my next question from another juror question about audits of doctors.

"Audits of doctors for overprescribing controlled substances, which phase?"

What year did y'all start doing that?

A Started in phase II.

Q 2012?

A Correct.

Q After *Holiday*?

A Correct.

Q Training courses with the DEA training courses y'all did, when did you start those? Phase I, II, or III?

A I don't know if that training was in place prior to me being in role in 2012.

Q You never took any of them when you were a pharmacist, did you?

A I don't recall. We took lots of training, but I don't recall the titles of the training.

Q The first one you can recall, 2012, after *Holiday*, right?

MR. DELINSKY: Objection, Your Honor. That's not the testimony.

THE COURT: Sustained.

Q Ma'am, first one you can recall, the DEA training?

A I don't recall the year that it started in.

Q Do you recall it ever happening before you took your job?

A Again, there was a lot of trainings, but I can't recall -- I can't recall.

Q So you don't recall any before. When is the first one you do recall? We looked at one that was I think 2013 or '16.

MR. DELINSKY: Objection.

Q Do you recall one before that?

A I don't remember --

MR. LANIER: Ma'am, you've got to wait. He objected and the Judge --

THE COURT: You can ask "Do you recall when the first one was?" I'll allow that question.

Q Ma'am, we've looked at one in here.

A Mm-hmm.

Q Remember that one?

A I do.

Q What was the date?

A I don't remember the date on the training that we talked about, if it was 2013 or if it was 2012.

Q All right. 2012 or 2013 on that one.

Do you recall any that ever happened before that?

A I don't, but that doesn't mean that there wasn't any.

Q Right. Doesn't mean there were, doesn't mean there wasn't. Just means you don't know of any, right?

MR. DELINSKY: Objection, Your Honor.

THE COURT: I'll sustain that.

MR. LANIER: All right.

THE COURT: The witness has answered the question.

Q Company policy on documentation: Resolve red flags

but don't worry about documenting it? That's not the policy, is it?

A That's not the policy.

Q The policy says, as of 2000 --

THE COURT: Well, I think, Mr. Lanier, you asked her this already with this document.

MR. LANIER: I'm sorry, Judge, I can't hear you.

THE COURT: You asked her this very question, and you showed her this document, so I think this is --

MR. LANIER: I'm being repetitive and redundant.

THE COURT: I guess that's a fair way to put it.

MR. LANIER: I got it, Judge.

Q I just want to -- Mr. Delinsky went back to it, and I want to make sure we're clear. That policy is "document all steps," isn't it?

A That's how the policy reads.

Q All right.

MR. LANIER: Ma'am, Your Honor, I'm through. Thank you, Ms. Harrington.

MR. DELINSKY: Your Honor, may I just ask one question on new subject matter that Mr. Lanier just raised?

THE COURT: If I do it here I'm going to have

to do it with every other witness, so everyone's been clear that we have just two rounds.

MR. DELINSKY: Thank you, Your Honor.

THE COURT: Thank you very much. It's been a long day. We appreciate your appearance, and safe travels back. You may be excused.

All right, ladies and gentlemen, we'll break for the day. Usual admonitions. Do not read, view, look, encounter anything about this case, or anything in any way, shape, or form related; no independent research. Do not discuss this case with anyone. Just have a good evening, and we'll pick up tomorrow morning at 9 with the next defense witness.

(Jury excused for the day at 5:21 p.m.)

THE COURT: Okay. Just be seated for a second.

Who do we anticipate for tomorrow, please?

MR. MAJORAS: Your Honor, we will start with Dr. Kevin Murphy.

THE COURT: Kevin Murphy, okay.

MR. MAJORAS: Then William Choi, another expert. So Dr. Murphy is an expert. I think it's Dr. Choi. Dr. Choi is an expert.

MR. BUSH: The much-postponed Dr. Choi will make it tomorrow afternoon.

THE COURT: Okay. All right. Two experts.

Okay. That's fine. Thank you, Mr. Majoras.

MR. MAJORAS: And if we finish out, we have depositions, Your Honor.

THE COURT: You'll have depositions?

MR. MAJORAS: If we need to, Your Honor. We're finalizing that.

THE COURT: Fine. Thank you.

If counsel has time this evening to take a look at the exhibits with Ms. Harrington, there were a lot used. I don't know which ones each side wants to offer, but I think it's good to stay current because then we're fresh on this.

All right. Have a good evening. The time today I had was 4.75 for the defense and 2.0 for plaintiffs.

Yes, Mr. Stoffelmayr?

MR. STOFFELMAYR: Judge, two concerns I have that I think it would be appropriate to give the jury an instruction on in the morning.

One is many, many times now over the last two days there have been questions posed to witnesses mocking them basically for not being aware of testimony that was given earlier in the trial. The Court's order prohibited that.

I think it should be explained to the jurors that it is no fault of any of the witnesses that they weren't aware of what Joe Rannazzisi said on the stand, for example, or what somebody else said during trial.

THE COURT: I don't think anyone was mocked. I mean, I --

MR. STOFFELMAYR: That's a matter of perception, but certainly the implication was like, "Oh, you're just learning that now," as if that is some shortcoming of the witness not to have known.

MR. LANIER: I do not believe I was doing that, Your Honor. I will make every effort --

THE COURT: All right. Well, I'll tell you what, I'm simply saying that the witnesses have been sequestered, and witnesses have not been allowed to listen in or read the testimony of prior witnesses.

MR. STOFFELMAYR: Thank you.

THE COURT: So I'll just make that --

MR. STOFFELMAYR: That's the first --

THE COURT: -- general statement. Okay?

MR. STOFFELMAYR: The second one is, I raised this yesterday and it's continued unabated, these constant, "Oh, I'm running out of time; oh, gosh, I can't show you the document because there's no time."

I think the jury needs to be told, I think the jury needs to be told that both sides were given the same amount of time and the Court has not imposed any sort of unfair limitation on anybody, because I don't know what conclusion they're supposed to draw when they hear this over and over.

THE COURT: All right. I'll simply say that the Court has imposed equal time limits on both sides, and I haven't told anyone how to use their time.

MR. STOFFELMAYR: Thank you.

THE COURT: Okay?

MR. STOFFELMAYR: Thank you, Judge.

THE COURT: All right. I'm making a note of this.

Okay. Have a good evening.

(Proceedings adjourned at 5:24 p.m.)

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter prepared from my stenotype notes.

/s/ Lance A. Boardman *11-03-2021*
Lance A. Boardman, RDR, CRR DATE